



1 FEDERAL TRADE COMMISSION

2

3 In the Matter of: )  
4 CDK GLOBAL, ) File No.  
5 a corporation, ) 171-0056  
6 And )  
7 REYNOLDS AND REYNOLDS, )  
8 a corporation. )

9

10

11 Wednesday, September 18, 2019

12

13 Sheppard Mullin  
14 2099 Pennsylvania Avenue, N.W.  
15 Washington, D.C. 20006

16

17 The above-entitled matter came on for  
18 investigational hearing, pursuant to notice, at 9:05  
19 a.m., for the testimony of:

20

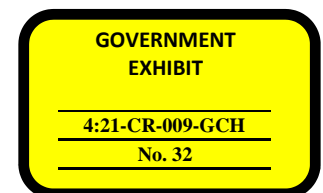
21 ROBERT BROCKMAN

22

23

24

25 Reported by: Deborah Wehr, RPR



FTC-0000001

Brockman  
CDK Global & Reynolds and Reynolds

9/18/2019

1 APPEARANCES:

2

3 ON BEHALF OF THE FEDERAL TRADE COMMISSION:

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23 ALSO PRESENT:

24 SCOTT CHERRY

25 JON EMMANUAL

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2

3 EXAMINATION BY: PAGE

4 Mr. Abrahamsen 5

5

6

7 EXHIBIT DESCRIPTION PAGE

8 CX 4468 NADA e-mail 40

9 CX 2250 ADP initial reply 47

10 CX 4043 Talking points 51

11 CX 4515 Captcha codes 67

12 CX 4004 Invalid login e-mail 73

13 CX 1151 ADP agreement 76

14 CX 4035 Talking points 99

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1                                P R O C E E D I N G S

2                                -       -       -       -       -

3                    MR. ABRAHAMSEN: This proceeding will come to  
4 order. This hearing has been convened on Wednesday,  
5 September 18th, at approximately 9:00 a.m. at the  
6 Sheppard Mullin Law Firm at 2099 Pennsylvania Avenue,  
7 Northwest. We will proceed under the Federal Trade  
8 Commission's rules that are applicable that we've read  
9 into the record several times. Is that amenable to  
10 you, counsel?

11                  MR. COHEN: It is. We agree to that. Thank  
12 you.

13                  MR. ABRAHAMSEN: Mr. Brockman, are you  
14 represented by counsel today?

15                  MR. BROCKMAN: Yes.

16                  MR. ABRAHAMSEN: Who is your counsel?

17                  MR. COHEN: Mr. Brockman is pointing down the  
18 row. We'll introduce ourselves for the record, if that  
19 is helpful, Mr. Abrahamsen.

20                  MR. ABRAHAMSEN: Yes.

21                  MR. COHEN: My name is Michael Cohen with the  
22 law firm Sheppard Mullin, and I represent Universal  
23 Computer Systems, the Reynolds and Reynolds Company,  
24 and Mr. Brockman today.

25                  MR. NAIK: My name is Amar Naik of Sheppard

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2 MR. CHERRY: Scott Cherry, general counsel of  
3 the Reynolds and Reynolds Company.

4 MR. EMMANUAL: Jon Emmanuel, in-house counsel  
5 for Reynolds and Reynolds Company.

6 MR. ABRAHAMSEN: Thank you. I'm Dana  
7 Abrahamsen. I represent the Federal Trade Commission.  
8 I'll be asking most of the questions today and  
9 tomorrow. And I would ask my colleagues to introduce  
10 themselves for the record.

11 MR. ANSALDO: I'm Alex Ansaldo. I'm also a  
12 lawyer with the FTC.

13 MR. WILLIAMS: My name is Mark Williams. I'm  
14 an economist with the Federal Trade Commission.

15 Whereupon --

16 ROBERT BROCKMAN,  
17 a witness, called for examination, having been  
18 first duly sworn, was examined and testified as  
19 follows:

20 EXAMINATION

21 BY MR. ABRAHAMSEN:

22 Q. Thank you, Mr. Brockman, very much for coming  
23 to Washington to sit for this hearing. We appreciate  
24 it very much. We'll be doing part of the hearing  
25 today. We'll finish up tomorrow morning and go until

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1 1:00 today and 1:00 tomorrow afternoon, as I understand  
2 the schedule.

3 You have been through this procedure before, I  
4 know, so I won't spend too much time on the  
5 preliminaries. The biggest problem we have in these  
6 proceedings is it's not like a normal conversation.  
7 You have to wait for me to get my whole question out.  
8 I have to stop so she can get the whole question down.  
9 And I have to listen to your whole answer before asking  
10 my next question. If we talk over each other, she'll  
11 remind us to stop doing that.

12 We will take breaks during the course of our  
13 hearing today and tomorrow. I will call for a break  
14 when I get to a good stopping point or you or your  
15 counsel can call for a break. The only ground rule we  
16 have there is that we don't take a break while a  
17 question is pending. We just answer the question and  
18 then we take our break.

19 If I ask any questions that you don't  
20 understand, you want me to rephrase it or we can have  
21 her read them back, that's perfectly okay during the  
22 course of our proceeding.

23 And with that, let me let you introduce  
24 yourself and explain your position with your current  
25 employer.

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1       A. Again, my name is Bob Brockman. The original  
2 company which lives on today as the top of a holding  
3 company I started in the living room of my house with  
4 my wife in 1970, 49 years ago. As a matter of fact,  
5 September 1st is what we recognize as the anniversary  
6 date.

7       Before that I worked for IBM for five years  
8 selling basically services. I gravitated to car  
9 dealerships because I felt comfortable around them. My  
10 specialty was parts inventory control. It was in the  
11 early days when you used to use card systems to keep  
12 track of parts and you had tubs and trays and sometimes  
13 slide-outs where you -- when you sold a part you had to  
14 go find where it is physically in the card system and  
15 record the date and how many were sold and carry  
16 forward the balance.

17       Q. So did you use your experiences at IBM to turn  
18 this card-based system into a computer-based system?

19       A. Yes. I was a salesman, and I sold it and  
20 installed it. There was a very, very early version  
21 that ran on, I believe, a 12K computer that would fill  
22 up half this room.

23       Q. And what was the name of the company that you  
24 founded?

25       A. Universal Computer Services.

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1 Q. And I think I have seen that referred to by its  
2 initials, UCS?

3 A. Yes, that's correct.

4 Q. When did you become a maker of what we would  
5 refer to as a DMS, dealer management system software?

6 A. Well, to go all the way back to the beginning  
7 of how it started and why it started, I went to work  
8 for IBM in January 10, 1966, for sales training, and in  
9 Houston branch office of the IBM Service Bureau. There  
10 were a number of applications, what they call  
11 preplanned software or prepackaged software in those  
12 days. They covered things like credit unions,  
13 brokerage firms, CPA firms. And then they had two  
14 applications for car dealerships which I would describe  
15 as version 1. They had a parts inventory system and an  
16 accounting package.

17 As I have said just a minute or so ago, I'm  
18 very familiar with car dealerships. I grew up on a  
19 small used car lot with my dad, and I went with him in  
20 my teenage years to things like car auctions. I went  
21 to new car dealerships to see if they had some older  
22 model stuff that they would like to sell.

23 At the same time, I started reconditioning  
24 cars. Originally it was washing and waxing them, but  
25 then it evolved into curing rust. Rust was a real

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1 problem in those days.

2 Q. And would you consider the IBM software  
3 packages that you just mentioned, the parts and the  
4 accounting, would you consider those a DMS or did DMS  
5 apply to something later?

6 A. They were the early stages. Those two  
7 applications are key applications even yet today.  
8 Accounting and parts are two of the major, probably --  
9 I consider there's probably eight applications that are  
10 in what is considered a DMS today.

11 Q. So how would you describe a DMS today?

12 A. It's an ERP system for car dealers, and it's  
13 highly specialized to how car dealers operate.

14 Q. And what was the acronym you just used?

15 A. ERP.

16 Q. What's that stand for?

17 A. That stands for enterprise reporting.

18 Q. When you were at UCS, were there particular  
19 kinds of car dealerships that you tried to focus on  
20 when you first entered the DMS business?

21 A. General Motors.

22 Q. And why was that?

23 A. They have a very, very compact part number.  
24 It's typically nine digits. It's all numeric. It's  
25 much easier to work with than, say, Ford. Ford has a

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1 part number which can be as long as 17 characters and  
2 has alphabetical components. And the Ford system, Ford  
3 dealers like that because you can look at a part number  
4 and you can tell what year model, what year model Ford  
5 it is, which Ford, is it a truck number, is it a  
6 four-door sedan number, is it a Mustang number.

7 Q. So the General Motors ones, being all numeric,  
8 were easier to put into the computer?

9 A. That's right.

10 Q. In terms of -- let me ask you to fast forward  
11 and tell me about the acquisition of Reynolds.

12 A. What would you like to know?

13 Q. Why did you buy it?

14 A. It can be best described as I was on safari in  
15 Africa, and one of my hunter fellows came and woke me  
16 up in the middle of the night and said, Mr. Brockman,  
17 Mr. Brockman, wake up, big tiger, get your gun.

18 And that's the reason why I did it. They were  
19 my major competitor, and the thought -- well, at first  
20 it kind of terrified me. The more I thought about it,  
21 it was really feasible from a financial standpoint.  
22 And it represented, again, the biggest tiger that I  
23 ever faced, and that's why I did it.

24 My wife asked me, she said, tell me how our  
25 life is going to be better because of this. I said,

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1 well, it's not. She said, okay, I just wanted to  
2 understand for sure.

3 Q. So at the time UCS and Reynolds merged  
4 together, who were the other companies that made DMSes?

5 A. It was a part of ADP, a division of ADP. There  
6 was a small DMS provider out of Salt Lake City. I  
7 would say as far as a complete DMS, there was just  
8 handful.

9 Q. And in this time period, right at the time of  
10 the merger, what would you estimate the market shares  
11 of the various DMS players to have?

12 A. Probably immediately after the merger, Reynolds  
13 and Reynolds, we didn't abandon the old name. We just  
14 quit using it. We used the Reynolds and Reynolds name  
15 because it's 150 years old and it's well known. But I  
16 would say probably somewhere in the 40 percent area,  
17 mid 40s.

18 Q. And what about ADP's market share at that time?

19 A. Probably like 30, 35 percent.

20 Q. Who would have been the number 3 in the  
21 industry at that time?

22 A. I don't remember. Those smaller companies kind  
23 of come and go, and I don't remember who the other  
24 ones -- there were several others, but again, very  
25 small. And they would be a borderline whether or not

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1 their product really could be considered a DMS.

2 Q. What would be it be considered if it wasn't  
3 considered DMS?

4 A. An accounting system.

5 Q. In the time that you have been in charge of the  
6 combined entities of Reynolds and UCS, have you tried  
7 to focus on larger dealerships?

8 A. Yes. The small dealerships are marginally  
9 profitable because they don't use very many software  
10 packages because they are located in some small town  
11 where they know everybody already and they can stand up  
12 and look out the front window and see their inventory.  
13 They don't need software packages for that sort of  
14 thing.

15 It takes a lot of travel. There's a lot of  
16 what we call bug crushing time. You got to go from one  
17 place to another place to another. So we focus on  
18 bigger dealerships, more complex, and we find that the  
19 smaller dealerships can get by with a lesser product.  
20 The bigger dealers which are now more and more -- were  
21 one physical person will own now five dealerships, we  
22 see 10, 15, 20, 25 where they are consolidating smaller  
23 dealerships to gain scale.

24 Q. You said in that answer that the smaller  
25 dealerships are marginally profitable. Did you mean

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1 for Reynolds as having them as a client?

2 A. Yes, as well as for themselves.

3 Q. Has Reynolds been successful in its attempt to  
4 focus on large dealerships?

5 A. Not completely, but certainly we've made some  
6 real progress. We have the number 2 largest public  
7 chain which is the Penske Group. And then we have the  
8 largest private group which is Hendrick Motor Sports.

9 Q. What would you define as the larger  
10 dealerships?

11 A. Ones that have bigger physical facilities,  
12 bigger inventory, sell more cars per year, have more  
13 employees.

14 Q. Is there in your mind a number of rooftops that  
15 is sort of a dividing line between larger dealerships  
16 and medium-sized or smaller dealerships?

17 A. A small dealership would be something, an  
18 entity that sells less than 50 new vehicles per month.  
19 That would be considered a small dealership. A large  
20 begins -- probably to be a truly large single-point  
21 dealership would be somebody that sells 400 new cars a  
22 month. And one thing I would like to make sure is  
23 understood, I consider rooftops a very poor measure of  
24 market penetration.

25 Q. Why is that?

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1       A. Well, as a private company, the only things  
2     that count as far as I'm concerned is net profit.  
3     Sales dollars is very much less important. The whole  
4     goal is to produce a quality product and sell it to big  
5     guys, and that means that I will forever trail  
6     rooftops, and not deservedly so. Of course, I don't  
7     publish financial statements, so I just have to accept  
8     the fact that everybody will think that we are smaller.

9       Q. So the better measure for you, rather than  
10    rooftops, would be the total sales that the dealership  
11    has? Would that be a factor you would look at?

12     A. Yes, certainly a larger dealership would be a  
13    better prospect for us. They would be more apt to need  
14    and want advanced software.

15     Q. When you say advanced software in that answer,  
16    what are you referring to?

17     A. Well, the basic software was accounting, parts,  
18    service, inventory, financing, factory communications,  
19    payroll, human resources management, just a larger  
20    number. In some cases as many as 25 or 30 different  
21    applications would be sold for an individual rooftop.

22     Q. And what capability does Reynolds have to serve  
23    these large dealerships that, say, some other DMS  
24    company wouldn't have?

25     A. We just have more, and they are better. They

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1 are better engineered applications. And the goal is to  
2 provide the management tools that help a dealer operate  
3 profitably above all else.

4 Q. When you say they are better engineered  
5 applications, do they have proprietary software to  
6 Reynolds?

7 A. No. We build all our own software.

8 Q. Is there software that Reynolds provides that  
9 helps a dealership that has multiple different OEMs  
10 that they serve have consolidated accounting across all  
11 their --

12 A. No. And especially what I call side-by-side  
13 reporting where we have a report that's this wide and  
14 you have dealership number 1 numbers, dealership number  
15 2 numbers, dealership number 3 numbers and where you  
16 can see what's going on kind of at a glance. And then  
17 we also consolidate for financial reporting.

18 Q. Why is it other DMSes can't provide that kind  
19 of information?

20 A. They can but it's a struggle. Whereas, our  
21 software, you press the button and you get the display  
22 instantly. Our accounting system is instant update.  
23 In management, particularly of multiple dealerships,  
24 the ability to push a button and see all this on the  
25 screen and print it off is very advantageous.

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1 Dealerships are -- they are different than your typical  
2 business in that they measure things literally by the  
3 hour. Dealerships are very thinly profitable. They  
4 operate on a 1-1/2, 2 percent margin. And if we don't  
5 have good sales this Saturday, then we miss our target,  
6 we've got to take action so that we have more sales  
7 next week to make up for the fact that we didn't hit  
8 our numbers this week. So the interest and need for  
9 realtime kind of information to drive a dealership, if  
10 you think of it as a ship, daily or weekly or monthly,  
11 that kind of numbers don't really cut it. You got to  
12 have right-now kind of stuff.

13 Q. When your sales force is talking a large  
14 dealership, do you explain to them that you have  
15 capabilities that other DMS providers don't have?

16 A. That's the goal. I teach our salespeople  
17 forget being a salesman because you don't sell this  
18 kind of stuff. I mean, people buy it, but you are not  
19 going to hammer through and convince them to buy your  
20 stuff. What you do is you teach. You teach how your  
21 stuff works and you teach them how it can be used in  
22 various segments of their business to earn more  
23 profitability.

24 Q. What would be some of the things you would be  
25 teaching a dealership in terms of your DMS's capability

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1 that is superior to other DMSes in the marketplace?

2 A. I would say the first and probably most  
3 important thing we talk about is we refer to it as  
4 built as one, works as one. So you can have multiple  
5 applications, but they talk to each other, which  
6 eliminates a lot of data entry. It makes the ability  
7 to produce a report that has information from multiple  
8 packages all showing on a screen at once.

9 Q. What other DMSes are most capable of also  
10 servicing the large dealerships?

11 A. It would be CDK.

12 Q. And what is it that CDK has that, say, the  
13 other ones in the market don't have?

14 A. They have a lot of historical -- they have been  
15 in business for a long time. Again, this is back to  
16 the issue of how do you define market share. If you  
17 define market share by rooftops, they will sell them  
18 any size, including the little bitty ones just to get  
19 rooftop counts because that's what pleases the  
20 analysts. As a public company, they have to chase that  
21 number.

22 Q. Are there arguments or teaching moments that  
23 you have your sales reps do to explain what the  
24 features are of the Reynolds DMS that other smaller DMS  
25 companies just simply can't replicate?

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1           A. Absolutely. I mean, that's what we are looking  
2   for. Car dealers are an interesting lot. Over the  
3   time that I have been in the business, where a car  
4   dealer is born, they are born as car salesmen. And  
5   they are very successful car salesmen. They accumulate  
6   enough nest egg so they can actually buy their own  
7   dealership. They are, frankly, in most cases, have no  
8   formal education past high school. They are physically  
9   attractive. They are very people sensitive. Their  
10  whole goal is to get the person who is interested in  
11  buying a car to like them and have personal rapport.

12           But so the challenge that we face is getting  
13  enough teaching time. The way that I was successful  
14  back in the beginning, I was not ever a salesman. I  
15  never held myself out as a salesman. I was an  
16  inventory system consultant. That was what my business  
17  card said. And if I could get five minutes with a  
18  prospect, that would give me all the time that I need,  
19  all the audience that I need because they were  
20  convinced that I knew what I was talking about.

21           Q. So aside from built as one, works as one and  
22  the capability to call up more information on the  
23  computer screen, what other attributes does Reynolds  
24  teach the dealership about that makes its product  
25  superior?

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1       A. Well, probably one of the more important places  
2    is car deals, transaction documents and the sale of a  
3    vehicle. You would think you would get all that done  
4    on one page. Well, it's more like 30 or 35 pages,  
5    especially when there's financing involved. And from a  
6    process standpoint, when a car sale occurs 90-plus  
7    percent of the time it's going to be financed. And a  
8    very large percentage of that group will be financed  
9    with what we call the captive finance companies.  
10   That's Toyota Motor Credit, Ford Motor Credit.

11       The mechanical process is that while the forms  
12    are prepared by typically an electric typewriter hooked  
13    to a computer that actually types, fills in all the  
14    blanks, it gets signed up, and then every day FedEx  
15    packages go from the dealership to the lender. And if  
16    they are doing five lenders, well, it would be five  
17    daily FedEx packages. And it arrives into a big puddle  
18    of clerks that open the FedEx packages and they take  
19    out the loan documents, and they commence to go through  
20    the loan documents to make sure everything is  
21    completed.

22       If everything works good, the typical  
23    turnaround time is 12 days before the dealer actually  
24    gets the money from the finance source. In the  
25    meantime, he has to pay off his floor plan daily. For

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1 every car that leaves the lot, it's got to be paid off  
2 within 24 hours. So there's a big stretch in there  
3 that takes a lot of working capital.

4 What happens if something is not initialled  
5 properly? It goes back in another FedEx package back  
6 to the dealership. The dealership then opens it up,  
7 figures out what's wrong, and nine times out of ten,  
8 they have to ask the consumer to come back to the  
9 dealership to sign a new -- that is never, ever easy  
10 because consumers don't want to do that. If there's a  
11 little more money involved, it's even worse.

12 Q. So is that a procedure that the Reynolds DMS  
13 can handle more seamlessly than one of the smaller DMS  
14 companies?

15 A. Exactly. We have a product which we call  
16 DocuPad. It is about 4-1/2 feet probably and 30 inches  
17 wide, and it has a 32-inch video screen. And the whole  
18 transaction takes place on the video screen. And the  
19 customer actually drives it. They have their own  
20 stylus and they click on this, click on that. The end  
21 result is you have a complete electronic document. And  
22 we know on every document where it's got to be  
23 initialled, where it's got to be signed. If it's not  
24 initialled and signed, we won't let it go. So that  
25 means the flow going to the finance company is clean,

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1 and you don't have where something is missing and it's  
2 got to be sent back to the dealership and the consumer  
3 has got to come back in. We just cut all that out.

4 Q. Is this DocuPad a product that Reynolds lets  
5 dealerships use that are not using a Reynolds DMS?

6 A. No. It is actually built into Reynolds' DMS.  
7 The calculations, for instance, that show on the screen  
8 are really from our standard finance package, all the  
9 rate calculations, the payment calculations. It's all  
10 part of our main F&I system.

11 Q. So that would be proprietary to Reynolds?

12 A. Yes.

13 Q. Can you give us another example of a feature  
14 that Reynolds has when you are educating the dealer  
15 about why they should go with Reynolds rather than one  
16 of the smaller DMS companies?

17 A. Probably another example is actually a fairly  
18 old example, but it's still really, really true. In  
19 the parts system, we actually prepare the parts  
20 invoice, which means that the parts department employee  
21 keys in the account number for the customer, and then  
22 they key in the part number for each part that's sold  
23 all in a blank. The inventory levels are reduced on  
24 those parts that have been sold. But probably more  
25 importantly is, and that's it's made possible what we

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1 call matrix pricing.

2 Q. What's matrix pricing?

3 A. It means that you end up with differing prices  
4 to the end user.

5 Q. Differing prices based on what?

6 A. Based upon what matrix that has been assigned  
7 to them. Basically what happens is that the parts  
8 department, as things get continually squeezed, as they  
9 always do, they have put some severe thought into how  
10 much it costs them to service different types of  
11 customers. The worst type of customer is the guy that  
12 comes in on Saturday, he had something broken on his  
13 car but he doesn't have the part number. So he says, I  
14 have got such-and-such kind of car and I need the  
15 thingamabob. And they start going through the  
16 electronic parts catalogs looking at pictures, and he  
17 says, there, that's the thing I want.

18 And lots of times the dealership doesn't have  
19 the part, but lots of times it does and they'll  
20 complete the sale. About half the time those parts  
21 come back on Monday returned for credit.

22 Q. Is this parts system that you have built,  
23 that's something you can only get with a Reynolds DMS?

24 A. The parts invoicing system is an integral piece  
25 of the whole system. And what it does is it decides,

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1 for instance, this type of customer I just described,  
2 he doesn't get any discount at all. But if there's  
3 another type of customer who you are fighting with a  
4 competitor to sell to, the discount is going to be very  
5 finely regulated, just a hair less expensive than the  
6 competitive dealership.

7 Q. And this is a system that Reynolds has  
8 developed internally?

9 A. Over the years. I actually developed it in a  
10 system that goes back to like 1975.

11 Q. You mentioned in a prior answer that -- I don't  
12 think I followed your answer completely, but you were  
13 mentioning a screen where a dealership had side-by-side  
14 dealerships, I believe, is the phrase you used.

15 A. Correct.

16 Q. You were describing something that was going to  
17 come up on the screen when they pushed one button. I  
18 don't think I followed what your explanation was.

19 A. Again, this is specific and unique to  
20 dealerships. They have a concept called daily  
21 operating control. And what that is, that is not a  
22 true financial statement but their best guess as where  
23 they are at as far as sales and profit every month  
24 compared to their goal where they want to be at the end  
25 of the month when the formal financial statement is

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1 published.

2 But they want to know -- a multi dealer, he  
3 wants to know if, say, he has five dealerships, he  
4 wants to know how the whole fleet is going. And so  
5 this is the ability to press the button and have the  
6 daily operating control numbers, which is as close as  
7 you are going to get to a financial statement  
8 approximation, to have those displayed on the screen  
9 simultaneously side by side. And there's different  
10 formats. You could have instead of just one column per  
11 dealer, you might have three columns per dealer.

12 Q. And this was a process that was developed  
13 internally at Reynolds?

14 A. Yes.

15 Q. And this is a process that you can't get if you  
16 have a non-Reynolds DMS?

17 A. The competition has varying levels in the same  
18 kind of capacity. Product development is, in our  
19 world, a rat race. What you do is you have an idea and  
20 you work hard and you build it, and for a while you  
21 have exclusivity, and that helps sell complete systems.  
22 And then the competitors see what you are doing and  
23 they copy it. And then that cycle just continuously  
24 goes on. And it's been that way the whole time that I  
25 have been in the business.

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1           Q. So in terms of this product, what would you  
2 have your sales force educate the dealer about to  
3 convince them to go with a Reynolds rather than some  
4 other DMS?

5           A. The DocuPad system is our sharpest, most  
6 powerful, most salable, best recognized product. That  
7 would be the one that they would certainly start with.

8           Q. In terms of going into a large dealership and  
9 distinguishing Reynolds' product as uniquely positioned  
10 to serve a large dealership, what would you teach the  
11 owner of the dealership?

12          A. There's an interesting phenomena that has to do  
13 with the sale of after-sale products. The typical  
14 cycle of a sale of a vehicle goes like this: The  
15 prospect comes in and they kind of generally know what  
16 they want. They are looking for cars or a pickup  
17 truck. The salesperson talks with them and tries to  
18 get them to settle on something that they can afford  
19 that's what they want. So the negotiation takes place  
20 and a, quote, deal is agreed upon.

21               Then they have -- the buyer is taken typically  
22 to a reception lounge and has to wait probably  
23 45 minutes to an hour to get to go to finish up the  
24 paperwork. Well, that's what the customer thinks. But  
25 what's really going on is this is now the second

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1 attempt to sell a whole bunch more stuff. This is  
2 where the extended warranties are sold. This is where  
3 what they call rust and dust, it's the paint protection  
4 package. It's where they sell you specialty insurance  
5 for your tires and wheels. So if you live in a town  
6 that's got lots of potholes and you have got  
7 low-profile tires and aluminum wheels, you are going to  
8 have a problem at some point.

9 And all this is done in the monthly payment,  
10 which is critical to the buyer. It is recalculated  
11 every time something is put on or taken off. People  
12 don't like that, that process. I remember when my son  
13 went out to buy his first car, I said this is what's  
14 going to happen. When you go in that room to finish  
15 the paperwork, do your arms like that, and it's no to  
16 everything.

17 Q. So how does this factor in to your ability to  
18 get large dealerships to go with Reynolds?

19 A. There's one more little tidbit. In DocuPad, we  
20 don't do the strong arm. They have their side of the  
21 DocuPad, and we present to them lots of times with  
22 visual sales aids, sometimes videos, they have their  
23 own stylus and they say, okay, I would like to have  
24 that one. And it recalculates what the payment is  
25 going to be. And well, that one is a little too much,

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1 so I'll take that one off. Let's do this one, and it  
2 recalculates the payment.

3 The miracle is people, by themselves, will buy  
4 more than happens when they are dealt with pushy  
5 salesmen.

6 Q. Is this a feature that you have found is easier  
7 to explain to a large dealership?

8 A. Yeah.

9 Q. Why is that?

10 A. It enables the whole transaction to take place  
11 rather quickly. And people, many, many customers, they  
12 just want to get done with the process and get on with  
13 life. So they make their decisions like that. But the  
14 end is, on average, a dealership that's using DocuPad  
15 will generate \$200 more profit than doing it the  
16 traditional way.

17 Q. Does CDK have something comparable to DocuPad?

18 A. They have a system that's called -- it has a  
19 name, but I'm sorry, I can't recall exactly what it is,  
20 where they have a menu of things that you can buy. It  
21 works on a slate, and you can check off the things you  
22 want and things you don't want. But it's not  
23 integrated into the finance system so you don't get the  
24 payment refresh.

25 And there is nothing out there that compares to

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1 the DocuPad and the ability to do payment refresh so  
2 that as people make their choices, they see what  
3 happens to their payment and they can put things on,  
4 take things off. We are the only ones that do that.

5 Q. So I have seen mention in some of the documents  
6 there's other DMS companies like Dealertrack and  
7 Auto/Mate, would they have something comparable to  
8 DocuPad?

9 A. No. We have invested I don't know how much,  
10 but it's in the millions in the software to make all  
11 this work.

12 Q. And your investment in software, is it fair to  
13 say it's been geared toward larger dealerships?

14 A. Yeah. Smaller dealerships operate at a much  
15 slower pace. For example, we just finished installing  
16 this at the Penske Group which has 150 dealerships.  
17 And the Penske Group, what they were spending per month  
18 on FedEx to get transaction documents in from a  
19 dealership into their central accounting office would  
20 be enough to make a strong man weep.

21 So if you use DocuPad, everything is  
22 electronic. So it's electronic, like instantly. So as  
23 soon as the transaction is finished, you hit the finish  
24 button, the whole thing, all the forms, all the  
25 signatures, everything goes to the central accounting

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1 office without having to use FedEx, which is a  
2 significant savings.

3 Also from a manpower standpoint, since we have  
4 so many computer checks for DocuPad to ensure that the  
5 transaction is done properly, when you don't have  
6 kickbacks from the finance sources, life becomes  
7 tremendously simpler. The whole organization can close  
8 their books a couple of days earlier than what they are  
9 used to closing them because they are not having to  
10 wait for packages of deals to come in. You don't get  
11 them -- in the old manual way you don't get them until  
12 probably a week after month close. With DocuPad, you  
13 have them right to the close and you don't have to ship  
14 anything around. All the consolidation is -- it's all  
15 automatic.

16 The updates to the accounting system are all  
17 done hands-off. And to a big dealer, that's very  
18 important. As a matter of fact, we have prospects that  
19 buy DocuPad more for that than they do for the fact  
20 that they can sell more and then generate more profit  
21 per deal. Their big bugaboo is the working capital  
22 that it takes to fund a transaction until you finally  
23 get funded by the finance source.

24 Q. And that's available to any dealership? Not  
25 just Penske?

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1           A. Any Reynolds.

2           Q. I want to shift gears a little bit before we  
3 take our first break and talk a little bit about  
4 Reynolds' relationship with the car manufacturers,  
5 which I'll refer to as the OEMs, if that's comfortable  
6 with you.

7           A. Yeah.

8           Q. Can you explain how the Reynolds DMS interacts  
9 with OEMs?

10          A. Yeah. Probably the simplest way to say is yes,  
11 it does.

12          Q. What kinds of -- I assume it's data being  
13 transmitted in some form. Can you explain what data is  
14 going on and what direction it's going and what kind of  
15 data it is.

16          A. It varies by OEM, but common to all of them is  
17 they want to know if the sale of a vehicle took place  
18 and they want to know what the vehicle identification  
19 number is of that vehicle because that helps them in  
20 their production planning.

21                 There is this ongoing disagreement between  
22 dealers and OEMs as to who owns the customer. Dealers  
23 like to think very much that they own the customer.  
24 However, the OEMs, through the software that we  
25 provide, you get all the information about all the

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1 customers and they build customer files on the fly.  
2 And they like to think that their direct mail pieces  
3 will be more effective than what the dealer does, which  
4 in some cases it is because they have dealers out there  
5 that don't do anything as far as customer follow-up is  
6 concerned. They are archaic.

7 Q. Does the --

8 A. The OEM specifies what we have to do, and they  
9 have a great cloud over our heads, because if we don't  
10 do exactly what they want us to do as far as taking  
11 data out of the DMS and shipping to it the OEM, they'll  
12 disqualify us. And our ability to be qualified a  
13 supplier of factory communications for their OEM is  
14 lifeblood for us. For instance, if General Motors  
15 decides they want to have a whole bunch more stuff as  
16 far as lots of data and data fields sent to them on  
17 each car deal, we say, yes, sir, yes, sir, because we  
18 dare not.

19 Q. Do they pay you for this?

20 A. No. They actually make the dealer pay. The  
21 dealer pays us for factory communications which is --  
22 the size of that bunch of software varies by OEM.  
23 General Motors is probably the most demanding right  
24 now. Ford has occupied that title for a while. But  
25 again, the OEMs are kind of at a constant race, among

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1 other things, to be closer to what's going on in the  
2 field.

3 Q. So just so the record is clear on this, I'll  
4 tell you my understanding. You correct me if I'm  
5 wrong. But if I go in to a General Motors dealership  
6 and I buy a General Motors car, General Motors expects  
7 you to take the data that I have been inputted into the  
8 dealer's DMS, my name, the VIN number of the car I  
9 bought, maybe other details, and they -- General Motors  
10 expects Reynolds to take that data that is in the DMS  
11 that the dealer has entered and ship that information  
12 to General Motors; is that correct?

13 A. You got it exactly correct. Now, there's a few  
14 more touches. The dealer has actually authorized  
15 General Motors to do that, okay. Why would they do  
16 that? Well, every few years, there's changes to the  
17 dealership agreement with the factory. And this is not  
18 a negotiated situation. It is a "you will." So if a  
19 dealer should dissent and say, for instance, forbid us  
20 to do what we do, he would start to suffer in many  
21 ways. He wouldn't get the fast-moving cars. His  
22 payments coming back from the captive finance company  
23 may not be as prompt as they used to be. It is -- you  
24 might face warranty claim audits more often than the  
25 typical dealership, which are painful and expensive.

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1 Q. Am I correct in my understanding that at some  
2 point after UCS bought Reynolds that there was a breach  
3 of contract suit that went on between Reynolds and  
4 General Motors?

5 A. I think there was something, but frankly, I  
6 don't remember exactly the details of what that was all  
7 about.

8 Q. You mentioned in a prior answer that one of the  
9 things you are very concerned about is the prospect of  
10 having an OEM decertify Reynolds as a DMS. What did  
11 you mean by decertify in that answer?

12 A. Decertify, again, they publish very detailed  
13 specifications as to how our dealer-to-factory  
14 communications has to work, what data has to be  
15 provided, in what format. And they change that stuff  
16 maybe not quite yearly, but certainly every two years  
17 there are changes. And we have to reprogram to meet  
18 the new specifications, and if we should fail to do  
19 that, we would not be a certified provider of  
20 dealer-to-factory communications for that OEM, which  
21 would have disastrous effects from a business  
22 standpoint.

23 Q. You say disastrous effects from a business  
24 standpoint, you mean from a Reynolds business  
25 standpoint?

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1           A.   Yes.

2           Q.   And would the fear there be that if you had a  
3   GM -- if you were decertified by GM, all of your GM  
4   dealers who use your Reynolds DMS would have to shift  
5   to a different DMS?

6           A.   Correct.

7           Q.   Has Reynolds been decertified?

8           A.   No.   But they also, when they give us specs and  
9   they give us the order about what has to be done, they  
10   never give us enough time to build it in an orderly  
11   fashion and fully test it.  There's always an extreme  
12   pressure scramble.  Some manufacturers are better about  
13   that.  Some are worse.  GM is one of the worst.  And  
14   Mercedes is probably one of the better.  Toyota is  
15   really good as far as giving us a good spec.

16           We have lots of situations with General Motors  
17   where the spec is -- has conflicting instructions as  
18   what's to be done, and we have to go back to General  
19   Motors and say, hey, your spec has got a problem; let  
20   me point that out to you.  We teach them what they did  
21   wrong and then they change the spec.  And then we are  
22   able to finish the programming and actually get it in  
23   the field.

24           Q.   How many OEMs have certified Reynolds?

25           A.   All of them.

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1 Q. Is that also the case with some of the smaller  
2 DMS companies?

3 A. The smaller DMS companies, considering the  
4 amount of grief that we go through to stay certified, I  
5 don't know how the small guys do it. I think what they  
6 must do is they must focus on one OEM or maybe two.  
7 Whereas, we have folks on all of them.

8 Q. You mentioned in a prior answer that General  
9 Motors makes the dealer pay for the data transfer that  
10 Reynolds does to General Motors. How is that payment  
11 made?

12 A. Part of our standard monthly bill.

13 Q. So the bill that General Motors sends to the  
14 dealer has a line item for this?

15 A. No. It is -- the situation is more like this.  
16 They say, Mr. Dealer, you need to sign up with Reynolds  
17 and Reynolds for the General Motors OEM communications  
18 package. This goes in effect December 1st. And in  
19 most cases they actually even mandate what that charge  
20 will be. Sometimes it's a monthly charge. Sometimes  
21 there's a one-time and then a monthly charge.

22 But it then looks as though we sold them  
23 factory communications. Well, it's nothing of the  
24 sort. What they did was we get that business because  
25 we are certified. And because our factory

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1 communications is very tightly integrated into the DMS,  
2 and trying to use the standalone factory  
3 communications, the amount of key entries it would take  
4 to get the data together and get it shipped to General  
5 Motors would be unthinkable.

6 Q. I'm not sure I follow exactly how the payments  
7 were made. You said it's either a monthly or a  
8 one-time fee. How is this payment made?

9 A. It's a product amongst all the rest of our  
10 products, and we invoice for it and collect it. And  
11 that's our pay for putting up with what General Motors  
12 wants.

13 Q. Does it appear as a separate line item?

14 A. Yeah. It will say GM Factory Communication.  
15 Or if they have multiple OEMs at the dealership, a  
16 similar process will take place with each OEM, and  
17 we'll bill it. It will be a standard line item for us  
18 to bill.

19 Q. I have seen on the documents reference to RCI,  
20 Reynolds Certified Interface, I believe it stands for.  
21 Are the OEMs part of RCI or are they part of some other  
22 type of certification within Reynolds?

23 A. The OEMs, we consider them part of RCI. From a  
24 programming standpoint they are. The same team handles  
25 that. And that is the way that it gets into our

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1     invoicing system.

2           Q.   You said in that answer, you emphasized the  
3     word "we" when you said that we consider it that way.  
4     Is there to some degree some different thinking on  
5     whether the OEMs are RCI certified?

6           A.   Well, the "we" includes me and everybody else.  
7     My position is I was the only programmer for the first  
8     five years, but I have not written a line of code since  
9     1992.  That's when we bought Ford Computer Services  
10    from Ford Motor Company.  However, I hang out with the  
11    programmers a lot.  I know them all -- not all of them  
12    because there's hundreds of them.  But the key ones I  
13    know very well and have worked with them for a long  
14    time.

15           And in product development, what my position  
16    is, there's an idea to build something and there's  
17    probably several other ideas to build something.  You  
18    know, there's many competing wishes for this or that or  
19    whatever, and I'm the guy that decides what we will and  
20    what we won't from a product development standpoint.  
21    So that's my relationship to the programming  
22    department.  I'm the keeper of the budget.

23           Q.   And you said the same team works on the OEMs.  
24    You mean the same group of software programmers that do  
25    all other RCI interfaces also are the same people that

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1 work with the OEMs?

2 A. That's a little more complicated to answer  
3 because factory communications started 30 years ago.  
4 And so the factory communications team was part of the  
5 main programming group, which in those days, of course,  
6 was much smaller. And I can remember the factory  
7 communications team is maybe like two or three  
8 programmers. They got done what needed to be done.

9 As time has gone on, it looks like those  
10 programmers don't belong in the main programming group.  
11 They belong off in the group that handles RCI requests  
12 when it comes to OEMs.

13 Q. You mentioned in a prior answer, I didn't quite  
14 catch it, but you gave a date and you said that's when  
15 we acquired, and I thought you said something about  
16 Ford. You acquired something from Ford? I didn't  
17 follow that.

18 A. Ford Motor Company -- and they started this  
19 probably in the late '60s. They were dissatisfied --  
20 Ford was dissatisfied or Ford dealers in general were  
21 dissatisfied as to what was available to them from a  
22 DMS perspective. So Ford built their own DMS software  
23 in a department, a fairly large department inside Ford  
24 Motor Company. But they didn't do a very good job at  
25 it mainly due to some personnel practices that Ford had

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1    which were -- when it comes to software development,  
2    were quite insane.

3               What they did was Ford Motor Company has a  
4    policy called cross-functional assignment where they  
5    take managers and they move them out of their skill set  
6    and they put them in other departments just for them to  
7    learn how the rest of the business works. And so the  
8    programming department that was fairly large was led  
9    by -- the supervisors throughout that department to a  
10   man, we are not programmers. They had never written a  
11   line of code and they were put in to supervise a  
12   programming team of 6, 8, 10, 15 people without a clue  
13   how to evaluate what they were doing. And therefore,  
14   Ford Dealer Computer Services' DMS product did not  
15   prosper.

16              The dealers kept bitching, so -- to a gentleman  
17   by the name of Bob Rewey, who was vice president of  
18   sales for Ford Motor Company worldwide. And he got  
19   tired of it and he said, I want to sell the goddamn  
20   thing. They put it up for bid, and we won the bid and  
21   quadrupled revenues overnight, tripled personnel  
22   overnight and became kind of the dominant supplier of  
23   DMSes for Ford dealers.

24              Q. Was this UCS that purchased this?

25              A. Yes.

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1 Q. This was prior to the time you merged are  
2 Reynolds?

3 A. Yes. Reynolds merger was 2006. This one was  
4 1972.

5 (A recess was taken.)

6 BY MR. ABRAHAMSEN:

7 Q. We'll go back on the record.

8 A. Can I clarify a date?

9 Q. Yes, by all means, Mr. Brockman.

10 A. The Ford Dealer Computer Services acquisition  
11 was 1972.

12 Q. 1972?

13 A. Yeah, 1972.

14 Q. So that would have been just a couple years  
15 after you formed UCS?

16 A. Wait a second. Excuse me. It was 1992.

17 Q. Okay. So about a goodly amount, over 20 years  
18 after you formed UCS and several years before you  
19 bought Reynolds?

20 A. Um-hum.

21 Q. Thank you very much for clarifying the record.  
22 Let me show you an exhibit we've marked as CX 4468 and  
23 ask you to take a look at it. CX 4468 has Bates number  
24 REYCID0568116. It appears to be an e-mail with an  
25 attachment from the National Automobile Dealers

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1 Association. And my first question for you,  
2 Mr. Brockman, is whose handwriting is on the first page  
3 of the exhibit?

4 A. That's mine.

5 Q. And what was the occasion for you to take these  
6 handwritten notes?

7 A. I was planning to -- I personally felt like I  
8 needed to attend an NADA/Reynolds data meeting.

9 Q. What was the purpose of the Reynolds data  
10 meeting?

11 A. Well, Peter Welch, of course, is the president  
12 of NADA, or was at that time, and I was very interested  
13 and concerned that what we might do as far as data  
14 security going forward to comply with what NADA's  
15 recommendations were.

16 Q. What were your concerns?

17 A. Well, at this point in time, I was not really  
18 fully informed as what the federal laws were as far as  
19 data security is concerned, and this particular meeting  
20 was really quite valuable in teaching me more about  
21 what was going on as far as data security is concerned.  
22 There was a gentleman, and I'm sorry I don't recall his  
23 name, but he was an attorney with NADA who specialized  
24 in knowing such things, and it was very, very useful to  
25 listen to what he had to say.

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1 Q. Let me ask you to turn to the page that has  
2 CX 4468-007. I'll let you take a look at that page,  
3 but let me -- I'm going ask questions about security  
4 protocols when it comes to DMSes with regard to third  
5 parties and whether or not the dealer can give a user  
6 name and a password out to a third party and how this  
7 document addresses that issue.

8 So I was going to ask you to look at the text  
9 at the top of this page, and I'm just going to ask you  
10 to give me your interpretation of footnote 19. I'll  
11 give you a chance to catch up.

12 A. The print is small, but I have read it.

13 Q. Is this document from NADA taking the position  
14 that the dealers can be permitted to give their vendors  
15 password access to their DMS?

16 A. I don't think so.

17 Q. How do you interpret the document?

18 A. I interpret the document as certain safeguards  
19 had to be followed when it comes to dealership data  
20 because dealerships were considered to be financial  
21 institutions, and therefore, to continue to qualify as  
22 financial institutions, there's certain things you have  
23 to do having to do with who gets access to what. A  
24 third party has to be covered by contract. A dealer  
25 has to have a contract with the third party before they

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1 can have any data that they hold turned over to them.  
2 All told, my perception of this document is things  
3 needed to be tightened up even further than what they  
4 were before.

5 Q. Tightened up further in the sense that -- in  
6 what sense?

7 A. Well, as to who has access. The whole  
8 evolution of security with DMS systems has kind of been  
9 a long and twisted trail. Reynolds, when I arrived, as  
10 far as passwords are concerned, they had evolved  
11 somewhat. Back in the beginning, a single password  
12 would get into thousands of Reynolds computers, and  
13 they had connected down to where it was a password by  
14 region and a password by state and then ultimately an  
15 individualized password because that was viewed to be  
16 kind of the first line of defense.

17 Dealers don't understand passwords and  
18 security. They don't particularly want to. Certainly  
19 the managers inside the dealerships are paid off gross  
20 profit, and they are interested in increasing gross  
21 profit and very little else.

22 Q. I take it the evolution of this security  
23 development included a period where dealers were giving  
24 out passwords to app vendors; is that correct?

25 A. Yes. It was widespread.

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1 Q. And is that contrary to your belief as to how  
2 data should transfer out of a DMS into a third party's  
3 hands?

4 A. It absolutely is at variance with the way I  
5 understand that it has to be done.

6 Q. And your preferred approach would be for the  
7 DMS and the DMS only to transfer data out of the  
8 dealer's DMS; is that correct?

9 A. That would be my preference in that handling of  
10 data has substantial liabilities attached to it. Based  
11 upon my experience so far, whenever there's some kind  
12 of data breach, whether or not we are responsible or  
13 not, we are the first ones that get called.

14 Q. Well, when you say a liability in that answer,  
15 you are talking about potential liability for Reynolds  
16 and Reynolds?

17 A. Yes.

18 Q. And the liability would arise -- correct me if  
19 I'm wrong, but your fear is that if a dealer authorized  
20 some third party to get data from the dealer's DMS, if  
21 that data got into the wrong hands, you have a fear  
22 that even though it was the dealer that permissioned  
23 that, you would be the deep pocket and you would  
24 ultimately face possible liability?

25 A. That's correct. At the very, very minimum, we

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1     would be on the hot seat. And we know that because we  
2     have been through one significant experience. There  
3     was a dealership called Franklin Chevrolet, and they  
4     had a general manager that had password access, quite  
5     properly, to everything inside the dealership's  
6     computer. And I think probably unknown to the dealer,  
7     because the dealer was clueless as far as security is  
8     concerned, this general manager copied the entire  
9     customer file to a laptop, his own laptop. And he  
10    ultimately left that company, and I don't know what the  
11    circumstances were of that, but sometime after that,  
12    the entire customer file for that dealership was posted  
13    to the internet.

14           And a complaint was made to the FTC, quite  
15    properly so. The FTC went to the dealership and said,  
16    look, this is your customer data that's been posted on  
17    the internet; what's going on? And the dealer said, I  
18    don't know; that's computer stuff; go talk to my  
19    computer provider.

20           And so we started meeting with the Federal  
21    Trade Commission, and that's where we met Michael. It  
22    took quite a bit of discussion to get it clarified that  
23    this was not a computer error or software error. It  
24    was a personnel problem. And when we finally got that  
25    straight, that was about \$400,000 later in legal fees.

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1 So we got kind of a rude lesson as to what the  
2 potential involvement we would have because I mean,  
3 just to explain, look, guys, we didn't do this, your  
4 guy did it.

5 Q. Let me ask you to -- I'm just going to follow  
6 up on something you said about CX 4468. I believe you  
7 said that you took from this publication the sense that  
8 Reynolds had to do more in terms of its security. What  
9 was it about the document that suggested to you that  
10 Reynolds needed to do more about security?

11 A. Well, it became pretty clear that allowing a  
12 third party to have access rights to our software, to  
13 pull off information and resell it to somebody else,  
14 that there was ample potential for us to get wrapped up  
15 in that whole thing.

16 Q. Did you have a sense that in an ideal world if  
17 you were able to have complete say over the -- what  
18 NADA's position was on security, that you would seek to  
19 have NADA come out with a stronger security statement  
20 than this where instead of just saying that they had to  
21 audit password access, that NADA might say that dealers  
22 shouldn't grant people outside of their dealership  
23 password access?

24 A. I don't know that we thought about doing that.  
25 Generally our attitude towards really any kind of

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1 requirements as far as our software is concerned is we  
2 seek a written document that we can peruse at length  
3 and understand it in depth. To go for conversation is  
4 not our preferred way. As programmers, you know, we  
5 want a spec in writing.

6 Q. And in fact, your contracts with your dealers  
7 say that they can't give out their password to anyone  
8 outside the company; is that correct?

9 A. Correct. And that has been the case -- it  
10 certainly was that way at UCS. At Reynolds it was that  
11 way long before I came. And it, in my opinion, is kind  
12 of the first step in having a sensible and coherent  
13 data protection strategy. And that's one of the things  
14 we do with RCI is we know exactly which data fields,  
15 which records the third party gets, and we know when  
16 they get them. They can't get any more than that  
17 without going through some process with us and also  
18 with their customer that additional data fields are  
19 appropriate or not.

20 Q. Let me ask you to take a look at another  
21 exhibit, CX 2250. CX 2250 has Bates CDK\_CID\_03047915.  
22 I'll ask the witness to take a look at it. This is an  
23 e-mail from Mr. Brockman to Mr. Workman and others with  
24 an attachment.

25 My understanding of this document is that you

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1 had had some sort of meeting with some people from what  
2 was then ADP at an NADA meeting, and then folks from  
3 what was then ADP sent you some materials. And this  
4 e-mail and the attachment is your response to CDK about  
5 the materials that they sent you. Is my understanding  
6 correct?

7 A. Yes.

8 Q. I wanted to ask about something that's said on  
9 the last page of the exhibit, which is CX 2250-003.  
10 And it's under the heading of Data Services. My  
11 understanding is that the materials that have been sent  
12 to you from ADP had envisioned a joint venture between  
13 ADP and Reynolds. And my question is in the third  
14 paragraph down under Data Services, it says, "Reynolds  
15 would contribute to this Newco entity its technology  
16 for accessing ERA and POWER systems plus all of its  
17 current contracts for providing these services to third  
18 parties."

19 What exactly was it that Reynolds would be  
20 contributing to this Newco under this proposed joint  
21 venture?

22 A. Frankly, the answer to that is I'm not sure.  
23 Their first submission to us was not requested and just  
24 kind of came in across the threshold. And I sat down  
25 and tried to future think subject to what they were

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1 talking about, some of which I was definitely more  
2 interested in than others, because as you may or may  
3 not be aware, there's a joint venture between us and  
4 ADP. What I'm quite sure you are not aware of is it  
5 hasn't been very successful.

6 Its original goal was to -- there's a process  
7 that Dealertrack has developed, and it's a good one.  
8 And they basically own that market. They have  
9 effectively a complete monopoly. How it works is that  
10 in the process of the sale of a vehicle, they are  
11 shopping for finance. And that's one of the things  
12 that the finance manager in the dealership does is he  
13 shops for the best deal not only for the consumer, but  
14 also for the dealership, because the dealership gets a  
15 profit margin off of selling financing.

16 The neat thing that Dealertrack has is that  
17 they have a shopping screen where they have pipes to --  
18 and by pipes I mean communication capabilities with  
19 over a thousand finance sources. Some big. Some  
20 small. But I mean, they have by far and away the most.  
21 And what you can do is you can have a transaction on  
22 your screen and you can hit the button and go shopping  
23 at two, three, four, five, ten different finance  
24 sources, which means it goes in electronically to those  
25 potential lenders. And the potential lenders, they

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1 each have software where they can, you know, render an  
2 up or a no decision in seconds.

3 Q. Is this the joint venture between CDK that you  
4 said wasn't successful that did a comparable service?

5 A. Attempted to.

6 Q. And this joint venture that's envisioned in  
7 CX 2250, was the notion that Reynolds would contribute,  
8 let's say, RCI to this Newco or am I off target there?

9 A. I don't think -- I don't think it says that.  
10 But one of the things that we were interested in was to  
11 try and make the existing joint venture successful.  
12 Amazingly, what's happened with that joint venture is  
13 the ability to have pipes to many credit sources. We  
14 were unable to get finance sources interested in  
15 talking to us because they said, look, what we've got  
16 is working just fine; thank you; have a nice day.

17 Q. The joint venture envisioned by the documents  
18 that you are responding to in CX 2250 would have been  
19 all data. Not just finance data; is that correct?

20 A. I don't know that it says all data. But again,  
21 it's worthwhile pointing out that as a result of this  
22 exchange, nothing was ever done.

23 Q. Why not?

24 A. Frankly, because I was very much irritated with  
25 ADP. I have had a long-standing hatred for ADP that

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1 goes back to the first year I was in business. But  
2 that's another story.

3 Q. Let me ask you a question. And counsel will  
4 appreciate the narrowness of the question and may  
5 instruct you to just answer yes or no to the question.  
6 Was this joint venture something that was discussed  
7 with counsel?

8 A. I don't think so.

9 Q. Was the idea of the joint venture the subject  
10 of any further discussion between you and people at ADP  
11 after this e-mail?

12 A. No.

13 Q. Did you communicate to ADP after you sent this  
14 e-mail that you were no longer interested in pursuing a  
15 joint venture?

16 A. I don't recall. I'm sorry.

17 Q. Let me ask you to take a look at an exhibit  
18 we've marked as CX 4043. CX 4043 has Bates  
19 REYCID0719798. My understanding is that these are  
20 notes from the 2012 time period. And my first question  
21 is on the very first set of slash marks on the top of  
22 the exhibit, first page of the exhibit under  
23 Background, the sentence reads, "Secondary issue is  
24 data security of business information -- True Car."  
25 What's the reference to True Car in this sense?

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1           A. True Car is a service that's provided basically  
2   at no charge to consumers where they can electronically  
3   shop multiple dealerships for price information. And  
4   True Car derives their revenue from dealerships that  
5   want to be part of the True Car family and thereby  
6   picking up additional sales. Whether or not True Car  
7   ultimately thrives or not remains to be seen, but it  
8   certainly is developing competitors, one called  
9   Carvana, you see ads on TV about where they have this  
10   huge building that has a big central elevator, and you  
11   can dial in which vehicle you want and press the  
12   button, and it will go find it and pull it into the  
13   center, bring it down. And you can open the door and  
14   drive it out.

15           Q. What is the reference in the sentence to the  
16   data security issue with True Car?

17           A. I don't think that's directly related to the  
18   line above. We are talking about an unattended remote  
19   access to Reynolds systems is going to stop. And the  
20   issue there is data security of personal information.

21                   Secondarily, we are talking about business  
22   information, which is pricing, competitive pricing.  
23   Dealers are very sensitive about what their typical or  
24   starting price would be for a specific vehicle, and  
25   they worry about that getting out.

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1           Then the next paragraph is all about RCI  
2     interfaces.

3           Q.   Right.  And the last slash, correct me if I'm  
4     wrong, but the one that begins, "Data broker situation  
5     is intolerable?"

6           A.   Yes.

7           Q.   And then it goes on.  Is this the point we were  
8     talking about earlier where you are concerned that if  
9     the information goes into the wrong hands, that there  
10    may be liability on the part of Reynolds as the deep  
11    pockets?

12          A.   Yes.  And I think about this time period I was  
13    becoming aware that as far as the hackers that were  
14    invading our systems was predominantly two companies,  
15    both owned by ADP, IntegraLink and DMI.  And their  
16    entire business was all around invading systems and  
17    sucking out data and then reselling data.  They have  
18    been at it for a long time, but I did not understand  
19    that they were -- they did more hacking than everybody  
20    else combined.

21          Q.   As you sit here today, what is your sense of  
22    all the third-party integration that was going on?  You  
23    call it hacking.  I'll use whatever phrase you are  
24    comfortable with.  As you sit here today, of all the  
25    instances of that that was happening to Reynolds in

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1 this 2012/2013 time period, what percent was accounted  
2 for by the combination of IntegraLink and DMI?

3 A. I don't know a percentage, but I know that far  
4 and away they were the major, which would have been  
5 over 50 percent, probably in, I guess, the 75 percent  
6 range.

7 Q. Who would have been -- could I use the term  
8 hostile integrator? What phrase are you most  
9 comfortable with?

10 A. We'll use hacker.

11 Q. What company would be the next most prevalent  
12 after the combination of DMI and IntegraLink?

13 A. There was a company called SIS who was pretty  
14 brazen about it. That's the one that we had a lawsuit  
15 with in federal court in Ohio and won.

16 Q. I'm going to come back to SIS so I don't lose  
17 my place in my outline, if that's all right with you.

18 A. Sure.

19 Q. I want to ask about one more bullet on CX 4043.  
20 Two more. It's the second-to-last one on the page  
21 that's talking about indemnification, and it's making a  
22 distinction, I believe, between the level of  
23 indemnification that would be needed for certain types  
24 of information. This particular bullet talks about  
25 batch-type data. What was your position on the need

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1 for indemnification if data was shared?

2 A. Well, the point where it's most sensitive is  
3 personal information. If it's personal information  
4 involved, that's the one where it's the most expensive  
5 to sort out, and therefore, it's the part that I'm most  
6 concerned from a security and from an indemnification  
7 standpoint.

8 The other type of data and the classic one is  
9 vehicle inventories. Vehicle inventory data is  
10 basically units that a dealership owns that they want  
11 to post for sale on an internet service. Hard to see  
12 where damages comes out or anything like that because  
13 there's nothing secret about it. You can go on  
14 dealership websites and see it all with no constraints  
15 on access. So therefore, indemnification for that type  
16 of data is much less relevant.

17 Q. The last entry on this exhibit which is on the  
18 backside of the exhibit under Use of Agents talks about  
19 the use of a third party acting under contract as an  
20 agent of ADP or Reynolds. And the sentence says that  
21 it's not an issue as the specific RCI agreement is  
22 directly between us.

23 What was the point you were making here about  
24 the exception for third-party agents?

25 A. As I recall, this applies to OEMs. And OEMs,

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1 frankly, don't have the manpower, skill or knowledge  
2 that's necessary to interact with DMS systems. And so  
3 therefore, if an OEM had a contract, say, with ADP to  
4 collect data from their dealers, that presented a  
5 different kind of situation than a hacker kind of  
6 situation. And it's where the OEM would anoint ADP as  
7 their agent, and so therefore, we get direct hooks into  
8 the OEM if anything goes wrong because we recognize ADP  
9 as a valid collector of information for that OEM.

10 Q. How is that different than the situation which  
11 you would refer to as hacking?

12 A. Well, the situation is such that the OEM says  
13 to us, look, we want to have such and such and such  
14 kind of data; and our agent in the collection of this  
15 data is ADP; and we would like for you to permit ADP to  
16 do this data collection that we want, and you get to do  
17 business directly with us, the OEM, from a contractual  
18 basis. And because CDK is an agent, they are basically  
19 transparent in the whole situation because the OEM  
20 signs up for the liabilities and for the  
21 indemnifications whenever -- which would include any  
22 acts by their agent.

23 Q. Why wouldn't the same arrangement be  
24 permissible for a dealer to sign up to have CDK act as  
25 their agent to collect data?

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1           A. Which means that we are basically permitting  
2   CDK an unfettered access into our stuff, in our system.

3           Q. Well, the dealer would be the one giving the  
4   permission?

5           A. See, the dealer is unable to give that  
6   permission because the dealer does not own the  
7   software. He has the rights to the software only under  
8   license, and the license is very specific about what's  
9   allowed and what's not allowed. And one of the terms  
10   is that it's the only people that are allowed access  
11   are dealership employees.

12          Q. I'm just trying to get the distinction straight  
13   in my mind about the distinction between letting an OEM  
14   use somebody like CDK as an agent versus letting the  
15   dealership use somebody like CDK as an agent.

16          A. Well, the manufacturers have an interesting  
17   disadvantage and they become the biggest pocket. Then  
18   of course, OEMs are, you know, many hundreds of times  
19   bigger than we are and have those people on the hook.  
20   If anything goes wrong, it's an okay kind of situation.

21          Q. CX 4043 were notes you prepared in order to  
22   have a conversation with Mr. Anenen, as I understand  
23   it; is that correct?

24          A. This was the beginnings of that. I think there  
25   are subsequent documents which are more complete and

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1 closer to that whole thing getting settled.

2 Q. Yes. I'm just asking about this document. We  
3 have others in my pile that we'll get to as well.

4 A. This would have been an early one.

5 Q. And was the subject of indemnification  
6 something you discussed with Mr. Anenen?

7 A. That was one of the issues.

8 Q. What was the discussion about?

9 A. Well, the discussion was that they need to get  
10 out of our software. They are hackers. And they got  
11 no right to be in our software, invading systems and  
12 using our software. And that's the principal part of  
13 what we talked about, which actually ultimately was  
14 accomplished.

15 Q. And that's the discussion that you led off  
16 with, the unattended remote access to Reynolds' system  
17 is going to cease?

18 A. Yeah. That was kind of a combination  
19 promise/threat. It was going to happen. I had put up  
20 with it for too long.

21 Q. Was that -- would it be fair to characterize  
22 your conversation with Mr. Anenen as being partially a  
23 threat?

24 A. Yeah.

25 Q. In what sense?

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1           A. We would flip the switch and disrupt everything  
2 they were doing.

3           Q. What did Mr. Anenen reply?

4           A. It was an interesting conversation. It was  
5 about an hour conversation, and it was by phone.  
6 Fifteen minutes of it were meaningful discussion. Then  
7 45 minutes was just, you know, drivel.

8           Q. What was the discussion that you would  
9 characterize as drivel?

10          A. Totally unrelated to the subject.

11          Q. So in the 15 minutes you talked about this  
12 subject, aside from what you characterized as a threat  
13 that you would flip a switch and cut them off of the  
14 system and the indemnification, what other topics were  
15 covered in the 15 minutes of substance?

16          A. I believe that it was a discussion about  
17 orderly stand down, which is an important issue really  
18 to both of us because the dealerships that are  
19 involved, our customers as well and therefore, to  
20 abruptly just pull the rug out means something that  
21 what our customers wants, which is to have their data  
22 sucked out and given to some third party, to provide  
23 them some kind of service would be distressing to them  
24 for that to occur, just bang, that the right way to do  
25 it was to have a contractual stand down. That way also

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1 CDK would have time to actually notify their customers  
2 that they were no longer going to be able to offer the  
3 service in the manner that they had previously, which  
4 was by hacking.

5 Q. Did their customers include OEMs?

6 A. I think in some cases they did.

7 Q. So the wind down, would that have encompassed  
8 the situation where CDK would get its -- the apps that  
9 it was marketing certified by RCI?

10 A. Yes. One of the things that was discussed, I  
11 don't know specifically, I don't have a date on this  
12 document, but over a period of time there were  
13 documents, discussions and so forth that we would enter  
14 into RCI agreements, as we would with any third party,  
15 for products that they were actually selling. Not to  
16 give them liberty to just redistribute the data but to  
17 actually use the data in creation of a product that  
18 they would build, maintain and support on their own.

19 And it's worked out that way. We ended up  
20 buying another company, and we pay CDK \$350 a month for  
21 over 800 dealers, which is quite a tidy sum, but it is  
22 a business intelligence piece of software that you have  
23 to have access to the total accounting information in  
24 the DMS. We have to have that in order to produce this  
25 product. And we pay a lot for it. I'm not familiar

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1 with what all we provide to them on an RCI basis, but I  
2 know there's some. I don't know it's as extensive it  
3 is in the agreement we have for the company known as  
4 reverse risk.

5 Q. And part of the idea was also that Reynolds  
6 would take its applications and go in through 3PA; is  
7 that correct?

8 A. Yes. And then this reverse risk application,  
9 this business intelligence application goes in  
10 through 3PA, and we get that data, and we have  
11 agreements with all the users of that product to get  
12 that data from CDK. And so from a confidentiality  
13 standpoint, it's a tight loop.

14 Q. So you have a contract both with the dealer who  
15 is using the app and also with 3PA; is that correct?

16 A. That's correct.

17 Q. We've looked through these documents and seen  
18 how these contracts worked, and I'm going to ask you  
19 some more questions of more documents as we go forward  
20 in the next two days, but I'm curious why up to this  
21 point in time Reynolds had not gotten its apps on the  
22 CDK dealerships through 3PA?

23 A. Well, I'm a little embarrassed to tell you what  
24 happened. The company that we bought the reverse risk  
25 product from were bandits, and they hacked CDK's

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1 systems to get the data. And we were horrified by that  
2 and one of the first things we did was we went to ADP  
3 and said, look, we want to be part of 3PA, and we know  
4 it's going to be expensive for us to do it, but that's  
5 what we want to do.

6 They said, well, fine, we'll go along with  
7 that. And fortunately, the subject of how was the data  
8 gotten beforehand never came up.

9 Q. So who was doing the integration for that  
10 product when you bought them?

11 A. It was a young lady that knew about such things  
12 that just logged on and sucked down information in the  
13 form of reports. And they already had the software  
14 built to parse through the reports to get the data that  
15 they wanted.

16 Q. How much more expensive was it going to be to  
17 do it through 3PA?

18 A. Well, I would have to get my calculator out and  
19 calculate what \$350 a month times 800 dealers times  
20 12 months a year and contrast that to the salary of a  
21 very intelligent young lady, which is probably in the  
22 hundred thousand dollars a year category. So it is  
23 going to be more expensive, but it would be straight up  
24 legal.

25 Q. And CDK was going to put its apps in through

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1 RCI. What is your understanding of why that hadn't  
2 happened prior to this 2013-2015 time period?

3 A. Well, they didn't need to before that because  
4 they had their DMI, Authenticom, busily doing it for  
5 them.

6 Q. In that answer you said DMI and Authenticom.  
7 Did you mean DMI and IntegraLink?

8 A. IntegraLink. Excuse me. I get names confused.  
9 I know a little bit about a lot of things, and of  
10 course, the corollary to that is it means over time I  
11 will know everything about nothing.

12 MR. COHEN: As Socrates said you would.

13 (A recess was taken.)

14 BY MR. ABRAHAMSEN:

15 Q. We were speaking before the break about CX 4043  
16 and the conversation you were having with Mr. Anenen in  
17 this time period. In this time period, 2012 time  
18 period, was there a difference in the messaging that  
19 Reynolds had vis-à-vis the CDK messaging on the issue  
20 of data security?

21 A. (No response.)

22 Q. My understanding is that at this time period,  
23 Reynolds was quite publicly saying that it was not in  
24 favor of dealers using third-party apps by giving out a  
25 password and user name where CDK wasn't really saying

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1 that same message. Am I correct?

2 A. I don't have a specific knowledge on what they  
3 say or don't say, but my belief was that they were not  
4 saying anything like that. They were -- their message  
5 kind of continued to be, well, whatever goes, which, in  
6 my opinion, was certainly based on my understanding of  
7 the NADA report, what they were doing is totally  
8 contrary. And from a messaging standpoint, it was  
9 really interesting that they are messaging about us and  
10 against us was the fact that we were oppressive idiots,  
11 which, in my opinion, was not the case at all.

12 Q. So when you say they are messaging against you,  
13 you mean they were trying to sell DMS systems by going  
14 to dealers and saying that they shouldn't get Reynolds  
15 because Reynolds had this bad policy on allowing third  
16 parties to integrate into their DMS?

17 A. That's correct. As part of their sales  
18 process, they held out their approach as being superior  
19 and more importantly, desirable for the dealer.

20 Q. And was that having an effect in the  
21 marketplace?

22 A. I don't know what effect, but certainly no  
23 potential for good effect.

24 Q. I mean, at this time period in 2012/2013, was  
25 CDK taking market share away from Reynolds?

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1           A. In terms of rooftops, yes. As a matter of  
2 fact, ever since we bought Reynolds, there has been a  
3 steady drip of the interception -- leaving and  
4 converting to CDK.

5           Q. And was one of the factors the reason they were  
6 leaving was because of this messaging that we've just  
7 been talking about on data security?

8           A. I believe it was. There's no way to quantify  
9 that, but I believe it was certainly a factor. It  
10 was -- we looked at it as, well, dealers will want to  
11 do what they want to do, and if they want to do it,  
12 where it's a free-for-all as far as data access or  
13 whatever, we don't need that business. That's not --  
14 there is nothing good going to come out of that.

15          Q. Was that part of the discussion you had with  
16 Mr. Anenen at the time the notes that we see in  
17 CX 4043?

18          A. I did not discuss that with Mr. Anenen. That  
19 was considered to be competitive market information  
20 which I'm not supposed to be doing with my larger  
21 competitor.

22          Q. Well, the first bullet is that you informed  
23 him, you threatened him that you were going to stop  
24 allowing them, CDK, to get access to your DMS; is that  
25 correct?

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1           A. That's correct.

2           Q. And you talked to him about the need to have  
3 more data security for personal information; is that  
4 correct?

5           A. Yes. This is where the discussion which was  
6 referred to earlier this morning about there's  
7 different levels of security required for personal  
8 information, and I think it's now called NPII as  
9 opposed to things like vehicle inventories, which is  
10 information that's already publicly available on each  
11 dealer's website.

12          Q. What did Mr. Anenen say when you brought up the  
13 fact that some of the information is personal  
14 information that's being bandied about?

15          A. I think he was very, very clear about that.  
16 Before this, I already made clear that it was the  
17 personal information where we saw the giant liability  
18 floating around.

19          Q. What was his response about his potential  
20 liability?

21          A. He never made any reference or response to his  
22 personal liability. Again, CDK was a public  
23 corporation. Steve Anenen had been the manager over  
24 that division back when it was a division of ADP, and  
25 he had been the president since CDK had been spun off.

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1 But he was a typical CEO/employee of a large publicly  
2 held corporation. Those type of people tend to have  
3 different outlooks than people like me.

4 Q. In what sense?

5 A. Well, I'm the CEO of a private corporation, and  
6 I feel really in a sense completely responsible for  
7 things like this.

8 Q. Whereas, how would you characterize  
9 Mr. Anenen's feeling on that?

10 A. Laissez-faire.

11 Q. In this 2012/2013 time period, was it your view  
12 that you would want CDK to adopt the same policy you  
13 had on data security?

14 A. No. All I wanted them to do, only thing that  
15 was ever discussed was I want them out of our software.

16 Q. Let me ask you to take a look at an  
17 Exhibit 4515. I'll ask you to take a look at it.  
18 CX 4515 has Bates REYCID0203876. It's a series of  
19 e-mails back and forth between several Reynolds  
20 employees. I don't believe Mr. Brockman's name is on  
21 the document, so I'll essentially be using it as a  
22 crutch to formulate my questions.

23 My first question, Mr. Brockman, is to identify  
24 one of the individuals here. The very top of the page,  
25 the very first line on the exhibit says that the e-mail

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1 is from Chuck Hoyt. Who is Chuck Hoyt?

2 A. Chuck Hoyt is the vice president of sales. His  
3 region covers probably 10 states, 12 states, and he is  
4 based out of, I think, the Detroit area. He actually  
5 lives west of Detroit.

6 Q. And the first e-mail in the chain, which means  
7 the bottom e-mail on the exhibit, Tuesday, August 13,  
8 2013, and the title of the e-mail, the subject line of  
9 the e-mail is Captcha Codes. Let me first ask you to  
10 explain for the record what captcha codes meant in this  
11 context.

12 A. Captcha codes are a device which is intended  
13 and really works pretty well to make sure that the  
14 answer is being replied to by a person as opposed to a  
15 computer. And it's a way to deny automated access to  
16 our software.

17 Q. And as I understand it, in approximately this  
18 time period, these captcha codes were put on the  
19 Reynolds DMS; is that correct?

20 A. Yes.

21 Q. Was this the first time Reynolds had put  
22 captcha codes on its DMS?

23 A. Probably not, but it was the most significant  
24 time. And it was in a place where it probably impacted  
25 a greater number of people, users in the dealership,

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1     than before.

2           Q.   Why was it more pervasive this time than  
3     before?

4           A.   Well, security is overhead for users.

5           Q.   I'm sorry?

6           A.   Users see data security as a, "god, why do we  
7     need this." That's kind of their outlook and attitude.  
8     And have you ever filled out a captcha screen?

9           Q.   I believe so. That's where you identify  
10    pictures; is that correct?

11          A.   Yeah, pictures or distorted numbers or  
12    distorted letters, whatever. They are least  
13    aggravating when you get them correct the first time.  
14    If you don't get them correct the first time, then you  
15    start to growl a little bit and about the third or the  
16    fourth time, you start to throw up your hands. Once  
17    people get used to captcha, they know how to interpret  
18    what the symbols are and get them over to letters and  
19    numbers as intended. But there was definitely, out of  
20    the Serra organization, there was some real grumbling.

21          Q.   Who is the Serra organization?

22          A.   It's a dealership group that's based out of  
23    Detroit, I think. Certainly that area.

24          Q.   I assume -- correct me if I'm wrong. I assume  
25    the grumbling was because they had certain automated

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1 access from third parties on their dealers and that  
2 those captcha codes were now disabling whatever apps  
3 the dealers were using; is that correct?

4 A. I can't tell from this e-mail exchange whether  
5 that was the case or whether it was simply people,  
6 users that were dealership employees and legitimate  
7 users having to go through the overhead of captcha.

8 Q. Did this frustration about the captcha codes  
9 percolate up to your level?

10 A. Oh, yeah. Particularly, Serra was a large  
11 customer, and in this particular instance, I would have  
12 heard about this. And the security, it's an  
13 interesting situation in that we can make things, I  
14 mean, totally secure and lose all kinds of customers.  
15 From a business standpoint, there's a tradeoff because  
16 we find that particularly with the larger customers,  
17 they basically agree with us. The dealers basically  
18 agree with us. They know that there's a need for  
19 security. They know that a significant part of their  
20 IP is tied up in their customer records. These are  
21 very valuable assets for a dealership corporation, but  
22 they don't want waves made for their employees.

23 So what will happen with somebody like Serra,  
24 you may have to back off a little bit and then wait a  
25 month or two and then go forward, because that's what

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1 the dealer really wants to do. What will happen is  
2 that in that first segment of time, the users within  
3 the dealership will become accustomed to captcha or  
4 whatever the particular technique that we are using at  
5 the time. And once they've mastered it, then they can  
6 take a little more without disrupting their life,  
7 without degrading their performance from a throughput  
8 standpoint regarding what they are having to do with  
9 the computer screens.

10 Q. So the security issue in putting in captcha  
11 codes is there are two components to that. There's  
12 sort of a technology component and then there's also  
13 sort of the business reality component; is that  
14 correct?

15 A. Yes.

16 Q. And at this point in time in 2013, had you  
17 gotten to the point where at least from a technological  
18 standpoint you could pretty thoroughly block what you  
19 refer to as hackers on your system?

20 A. We made a lot of progress, but we were not in a  
21 state of perfection because security, as security  
22 changed or security enhancement that the third parties  
23 can never find their way around is really good, but  
24 there's not very many of those. And what will happen  
25 and more typically is we'll put in a new process that

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1 will block an outside hacker for a while.

2           Then they do things like we've had one  
3 situation where whenever -- let me see if I can  
4 describe this correctly. There's a third party comes  
5 in and they are looking like a person at a terminal.  
6 Then what we do is we pop up a captcha because we are  
7 trying to figure out whether it's a machine or a  
8 person. They will contract somebody in Vietnam to be  
9 kind of watching over the shoulders of our screens.  
10 And as a human, they can figure out the captcha, and  
11 that lets the third party invader in. They have,  
12 quote, defeated captcha. Well, that's not really a  
13 very good way, but a poor way is better than none. And  
14 so we have situations like that occur.

15           There's all manner of different strategies.  
16 They change the classification of the person. They'll  
17 make them a systems specialist that works for the  
18 dealership, and we will let -- unintentionally, we'll  
19 end up letting some of those people through because  
20 they have a special status and they are responsible for  
21 the administration of the system, they are responsible  
22 for the password -- dealer passwords for everybody in  
23 the organization.

24           Q. Was one of your concerns when you put in a  
25 captcha that was widespread, was that ultimately it

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1 could anger dealers so much that they might go to a  
2 different DMS provider?

3 A. Clearly.

4 Q. Did that happen?

5 A. I can't point to a specific instance, but I'm  
6 sure it happened. It is -- from a business standpoint,  
7 we have two different extremes. One extreme is as we  
8 have lax security, it would be a hell of a lawsuit  
9 versus having security that's so tight that it angers  
10 customers and they leave us. And I'm kind of in the  
11 midst of that.

12 Q. Let me show you an exhibit that we've marked as  
13 CX 4004 and ask you to take a look at it. CX 4004 has  
14 Bates REYCID0042299, and it's a series of e-mails, and  
15 Mr. Brockman is on at least one of them.

16 So my understanding of this exchange of e-mails  
17 is that there had been integration going on with  
18 IntegraLink and DMI with regard to certain vendors that  
19 dealers wanted to use and that those connections had  
20 been interrupted. And then the people at DMI and  
21 IntegraLink had been telling dealers that -- and I'm  
22 looking at the first sentence of the top e-mail -- the  
23 second sentence of the top e-mail, "Please understand  
24 that R&R is one hundred percent responsible for this  
25 situation."

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1 Is that an accurate reading of the e-mails?

2 A. Unfortunately, yes.

3 Q. So what is your reaction when -- this came to  
4 your attention? Your name is on the e-mail. What was  
5 your reaction to this position that IntegraLink and DMI  
6 were taking?

7 A. I was clearly not happy about that at all and  
8 which is one of the reasons why that I became more and  
9 more demanding of CDK to get out of our sites.

10 Q. When you say more and more demanding of CDK,  
11 how were you being more demanding of CDK?

12 A. Because I was telling their CEO that I was  
13 beginning to lose patience and that I was -- if  
14 necessary, I was going to flip the switch and all their  
15 stuff would be blocked and there would be no  
16 opportunity for a rational stand down.

17 Q. In this time period, was there also issues with  
18 OEMs becoming blocked from being able to use their apps  
19 because of these security enhancements?

20 A. Not really very much. I think in some cases  
21 rather than insert a third party between us and the  
22 OEM, we were dealing directly with the OEM. And that  
23 straightened the situation up a lot.

24 Q. But were some OEMs using DMI to integrate?

25 A. Yes.

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1 Q. And were they getting blocked at times?

2 A. I would presume so.

3 Q. Did their anger ever reach your level?

4 A. No.

5 Q. The OEMs?

6 A. No, because when the subject did come up with  
7 OEMs, we would say, guys, you all need to understand  
8 what's going on. Basically we are being hacked, okay.  
9 And DMI is ending up with data for which they are not  
10 authorized to have. They get it out of our system  
11 improperly.

12 And the OEMs understand about security a lot  
13 more. They are big corporations. Security is a major  
14 thing for them and has been. It's not new to them.  
15 They have been very sensitive all along. And I think  
16 in most cases at that point the conversation stopped.

17 Q. Is this August 2013 time period, was this, the  
18 disruptions and the messaging that's being sent out by  
19 IntegraLink and DMI, did this end up resulting in more  
20 conversations between Reynolds folks and CDK folks  
21 about the wind down agreement?

22 A. I would say generally not because the  
23 conversation was really taking place between me and  
24 Steve Anenen.

25 Q. How often did you talk to Mr. Anenen?

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1           A. Very infrequently. Maybe months between  
2     conversations.

3           Q. Would you call him or would he call you?

4           A. I think in some cases both or I would call him  
5     and request a call back.

6           Q. And we are going to talk next about a meeting  
7     that Mr. Schaefer had with Mr. Gardner in September of  
8     2013. Were you aware that Mr. Schaefer was going to  
9     meet with Mr. Gardner?

10          A. It was Bob Schaefer's job to interface with all  
11     RCI customers and the OEMs, and as part of that he had  
12     conversations, I'm sure, with CDK people.

13          Q. We're going to show you some documents about a  
14     particular meeting in September of 2013. Do you recall  
15     a situation where Mr. Schaefer informed you that he was  
16     going to meet with CDK in that time period?

17          A. I'm sorry, I don't recall specifically.

18          Q. Let me ask you to take a look at CX 1151.  
19     CX 1151 has Bates CDK\_CID\_01734952. It's a series of  
20     e-mails, including one to Mr. Brockman and one from  
21     Mr. Brockman.

22          A. (Reviewing document.)

23          Q. Mr. Brockman, I would like you to take a look  
24     at CX 1151-002, second page of the exhibit. And at the  
25     top of that page, there are three numbered paragraphs,

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1 and I would like you to look at numbered paragraph 2.  
2 And it states, "Reynolds and Reynolds indemnification  
3 has been relaxed since we last exchanged documents."

4 What is your understanding of the extent to  
5 which Reynolds and Reynolds had relaxed its  
6 indemnification position?

7 A. I'm sorry, I don't recall specifically what was  
8 going on. This document in general was written by Bob  
9 Schaefer, is what it looks like, and covered all the  
10 points that we wanted. Exactly what we were asking for  
11 as far as indemnification I don't recall.

12 Now, the interesting part about this document  
13 is it's dated in September. Well, my last really  
14 serious conversation with the CDK CEO had happened much  
15 earlier in the year. And what's happening here is that  
16 Howard Gardner has finally been given authority to  
17 actually get serious about getting out of our systems,  
18 and to which I heaved a sigh of relief because I really  
19 didn't want to go through this situation where I just  
20 pull the plug on everything. I was going to, but I  
21 really didn't want to.

22 Q. Because it would have angered the dealers?

23 A. Oh, yeah, it would have angered the dealers.  
24 So the fact that this letter and what was happening  
25 here was beginning to happen meant that finally Steve

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1 Anenen had seen the handwriting on the wall, that I was  
2 serious, and he had given authority to go ahead and  
3 work out an agreement.

4 Q. Just so the record is clear and we are clear,  
5 Mr. Gardner writes the e-mail that begins at the sort  
6 of bottom third of the first page of CX 1151. So the  
7 bulk of this exhibit is authored by Mr. Gardner at CDK;  
8 is that correct?

9 A. Yes. But I think as it's written, I think that  
10 there are big pieces of this that actually came out of  
11 our requirements to them. They are basically saying,  
12 okay, and they are restating what they are saying okay  
13 to.

14 Q. When you said in that answer Reynolds'  
15 requirements to CDK, what were you referring to?

16 A. Well, there was other communications, I presume  
17 in writing, from Bob Schaefer to people like Howard  
18 Gardner saying, look, when we say get out of our  
19 system, we mean all the way out. Not only now but  
20 forever out.

21 Q. In that same paragraph that we were looking at  
22 on CX 1151-002 numbered paragraph at the top of the  
23 page 2, the sentence which I read part of it into the  
24 record, contains a clause midway through the sentence  
25 that says "since we last exchanged documents." What

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1 documents are being referenced in that paragraph?

2 A. I'm not sure. I would presume that there would  
3 have been documents exchanged back and forth between  
4 Bob Schaefer and Howard Gardner, but I had turned over  
5 that process to Bob Schaefer and said, okay, they are  
6 basically agreeing to our most central and most  
7 strongest want; go ahead and work with them. So I  
8 presume there were other documents before this.

9 Q. What was your most significant want?

10 A. For them to get out of our systems and stay  
11 out.

12 Q. There is a numbered paragraph further down in  
13 the same second page of this Exhibit CX 1151-002 midway  
14 down the page, and it references OEMs. And I won't  
15 read the whole paragraph into the record, but it talks  
16 in the first sentence about DMI will formalize and  
17 extend our collaborative approach to helping OEMs.  
18 What was your understanding of what the collaborative  
19 approach had been with OEMs up to that point?

20 A. It's my understanding that what we were working  
21 towards is -- we'll take General Motors. If General  
22 Motors wants data out of Reynolds dealerships, we are  
23 the ones that provide the data. Likewise, if CDK wants  
24 to give data to the OEMs from CDK dealerships, that's  
25 fine. That's their bailiwick. But the important part

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1 is that just because they have a contract with an OEM  
2 that requires data from Reynolds dealerships, no part  
3 of this agreement is going to allow that to go forward.  
4 That's part of the get out and stay out.

5 Q. So aside from maybe playing some role as an  
6 agent, the idea here would be for CDK to stop doing  
7 integration for the OEMs and have the OEMs have an  
8 agreement with RCI; is that correct?

9 A. Um-hum, yeah. Yes.

10 Q. The last clause of the last sentence in  
11 numbered paragraph number 1 talks about a smooth  
12 transition for each OEM to a Reynolds certified  
13 interface. And the last clause reads, "when Reynolds  
14 is prepared to provide service." What was the issue  
15 with Reynolds being prepared to provide service to the  
16 OEMs?

17 A. The OEMs had special wants for data, and since  
18 the RCI program that would be applicable to data  
19 extraction forwarded to General Motors, there would be  
20 software work that had to be done. Simply agreeing  
21 that that's going to be the situation doesn't  
22 necessarily mean we got the technical work done to  
23 actually effect it, make it happen.

24 Q. So my understanding, and correct me if I'm  
25 wrong, but this was a situation where if somebody like

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1 DMI or IntegraLink was getting data from Reynolds'  
2 dealers into the OEMs, even if there was an agreement  
3 that that process would stop happening that way, there  
4 was still going to be a lead time before RCI could, in  
5 fact, get the data into the OEMs' hands; is that  
6 correct?

7 A. Correct.

8 Q. Why were the OEMs using DMI to get access to  
9 this data from the Reynolds DMSes?

10 A. I would suspect that somebody from DMI was  
11 knocking on the door offering it as a service. And you  
12 have to understand that the DMI's position specifically  
13 with General Motors changed over time. And one of the  
14 important changes that happened was that when asked,  
15 DMI would say, okay, we are collecting these pieces of  
16 data, this field, this field, this field, this field.  
17 Well, in fact, they were collecting a whole bunch more  
18 that General Motors didn't even know about. And then  
19 they were taking this additional data that they had  
20 acquired as part of a GM-authorized process and selling  
21 it in the open market.

22 And when we first figured that out, General  
23 Motors was really surprised. And of course, DMI denied  
24 it flat footed. And we had the traps. We had the data  
25 traps to prove it. And we proved it up to General

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1 Motors, and they were very angry with DMI. And  
2 therefore, switching over to getting things from us  
3 straight and by contract and by program we got the  
4 exact fields that are going to be delivered, that and  
5 nothing else, nothing more, nothing less, they were  
6 ready for that.

7 Q. Was part of the DMI pitch to an OEM that they  
8 would be able to provide them the data cheaper than  
9 they could get it through RCI?

10 A. I don't think so.

11 Q. Then --

12 A. But I don't know what DMI's prices were like.  
13 But if I had to guess, the price was not an issue as  
14 far as the manufacturers are concerned.

15 Q. So why would they go with DMI rather than go to  
16 RCI originally?

17 A. Well, all the OEMs would dearly love to have  
18 all the data they need all from one source all in one  
19 format, and they would prefer not to do business with  
20 multiple companies. They would rather do business with  
21 just one. So part of the DMI sales pitch is, look,  
22 we'll handle it all and you will get the data you need  
23 in a pipeline that's got exactly what you want.

24 Q. So General Motors, to use that example, would  
25 have dealerships that had different DMSes. So DMI

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1     could go to take the CDK data and the Reynolds data and  
2     the Dealertrack data and give it all to General Motors  
3     in one bundle and have all their dealers represented  
4     through one report rather than through multiple  
5     reports; is that correct?

6           A.   That's correct.

7           Q.   Did you discuss the OEMs transitioning to RCI  
8     with Mr. Schaefer?

9           A.   I'm sure I did just because it was a topic, it  
10    was a project that was open.  And so I'm sure that I  
11    did, but specifically what I talked about and when, I  
12    don't remember.

13          Q.   I had asked you before I showed you CX 1151 if  
14    you were aware of a meeting that Mr. Schaefer had with  
15    Mr. Gardner in the fall of 2013.  Having reviewed this  
16    exhibit, is there anything about reading it that  
17    refreshes your recollection about this particular  
18    meeting that this document is discussing?

19          A.   Nothing specifically.  I mean, everything here  
20    is things that I would have expected to have been  
21    discussed at that meeting.

22          Q.   And by this --

23          A.   And actually, when I say that meeting, there's  
24    always a series of large and smaller meetings going on,  
25    some of which get reported in print, many that don't.

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1 I mean, that's just the way that world works.

2 Q. So you were aware that Mr. Schaefer was having  
3 frequent communications with people at CDK on these  
4 subjects?

5 A. Yes. I would have expected that. It is a  
6 nontrivial project because, of course, GM wants their  
7 data uninterrupted, no change in format. They don't  
8 want -- they want no changes at all, and they just want  
9 their data.

10 Q. And if they couldn't get their data, would that  
11 be an instance where they could decertify a provider  
12 such as yourself?

13 A. I would say in extremis, yeah. We would be  
14 very careful to get it right and did get it right.

15 Q. The paragraph about the OEMs, the number 1  
16 paragraph that we have been talking about makes  
17 reference to a transition to a protected program. It's  
18 in the second line down in that paragraph. What was  
19 your understanding about what the protected program was  
20 going to be?

21 A. Well, what it meant was and that's that we  
22 would continue with our security enhancements, but as  
23 part of the stand down, we would turn off interruption  
24 to CDK as long as they were proceeding as they are  
25 supposed to through the turndown -- or not the

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1     turndown, but the -- so the whole project of standing  
2     down could proceed without ripples.

3           Q.   Let me see if I understand it.  Correct me if  
4     I'm wrong.  Whatever security measures Reynolds was  
5     going to take generally, you would carve out an  
6     exception under a protected program for CDK so that  
7     those security measures wouldn't block the data from  
8     going to the OEMs; is that correct?

9           A.   Correct.

10           (A recess was taken.)

11           BY MR. ABRAHAMSEN:

12           Q.   Mr. Brockman, I would like to continue to look  
13     at CX 1151.  Under the second numbered paragraph in the  
14     lower part of the page, the heading of that paragraph  
15     is Non-OEM Third Parties.  And my understanding of this  
16     paragraph is this has to do primarily with applications  
17     by companies that are not OEMs; is that correct?

18           A.   Yes, I believe that's correct.

19           Q.   What was your understanding of how this  
20     protected program would work?

21           A.   I think this referred to, first of all, DMI and  
22     IntegraLink and that -- that's my understanding.

23           Q.   So these are the applications that are on  
24     Reynolds dealerships using DMI or IntegraLink to get  
25     the data off of those dealers' DMSes, and that will

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1    become -- they'll change their way of doing that; is  
2    that correct?

3            A.    Yes.    What will happen is that all of such data  
4    extractions will convert to RCI.

5            Q.    Was this what you were hoping to see from CDK  
6    for some time at this point?

7            A.    Yes.    This is the goal, to get them out of our  
8    hair.

9            Q.    The next paragraph down is number 3, Technology  
10   Investment.   "R&R and DMI will collaborate to define  
11   and invest in the development of technology-based tools  
12   that automate, accelerate, simplify and streamline the  
13   process of setting up and managing the protected  
14   programs for OEMs and third parties."

15            Did technology investments take place?

16            A.    Presumably so, because we, in fact, were able  
17   to convert OEM and non-OEM situations, and it all got  
18   done.   So whatever we had to do to do that, we did.

19            Q.    Was there technology that had to be developed  
20   that had not already existed in DMI and Reynolds?

21            A.    I'm sorry, I'm not knowledgeable of that.   This  
22   project was a very, very difficult one to get started,  
23   but once it got going, I'm on to the next one.

24            Q.    So you correct me if I'm wrong, but I'll give  
25   you my understanding.   We'll see if it's accurate.

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1     There was going to be work that had to be done to  
2     transition OEMs and apps from using DMI and IntegraLink  
3     to get data to now getting that data through RCI, and  
4     that was going to be an undertaking that had to be done  
5     over the course of a period of time. But as you sit  
6     here today, you are not aware of any new or additional  
7     technology that had to be developed to make that  
8     transition work; is that correct?

9             A. That's correct.

10            Q. Let me ask you to look at paragraph number 4,  
11     Exclusivity. I can read the sentence into the record.  
12     "Exclusivity. Due to the investments in technology  
13     required to establish and administer protected  
14     programs, R&R is open to the R&R protective programs  
15     becoming an exclusive offering by DMI."

16            What was your understanding of the exclusivity  
17     that was going to be offered by DMI?

18            A. As I recall, looking at this provision, this  
19     was a provision that really wasn't necessary being in  
20     here at all, because as the transition gets  
21     accomplished, there is no more -- when they talk about  
22     investments in technology required to establish and  
23     administer the protected programs, that's already all  
24     done as part of the previous processes. So I'm not  
25     quite sure exactly what's implied by this because as

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1 far as I know, DMI and IntegraLink and the third-party  
2 users that they represent, they didn't do anything  
3 more. Once it's set up and the data is being  
4 transferred as per contract, that's the end of the  
5 story. It's working.

6 Q. Is the notion that Reynolds will enter into  
7 this agreement to have the data transferred from RCI  
8 and IntegraLink to Reynolds but that exclusivity refers  
9 to Reynolds not entering into a similar agreement with  
10 any other integrator?

11 A. Absolutely not. At this point I'm sure we  
12 still had some third parties out there that we had not  
13 reached agreement with and they had been finding ways  
14 to work around the security checks. And there is no  
15 way -- at this point, my happiness with CDK has  
16 increased a little bit, but it's still so far low that  
17 you can't hardly measure it.

18 Q. Did you talk to Mr. Schaefer about this  
19 exclusivity provision -- we are going to look at your  
20 e-mail back to Mr. Schaefer in a moment. But is this  
21 exclusivity provision something you discussed with  
22 Mr. Schaefer?

23 A. I'm sorry, I don't recall. I may or may not.

24 Q. Did Reynolds have a protected program to get  
25 its applications on the CDK DMSes?

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1           A. As far as I know it did not, because it ended  
2 up that the reverse risk occurred at some period of  
3 time after this. And the young lady that was  
4 responsible for extracting data out of ADP systems, she  
5 was independent. She didn't require any help at all  
6 from ADP. And she just kept on extracting and keeping  
7 that product running as it was transitioned over,  
8 because you don't transition 800 dealerships overnight.  
9 That had to be built. And we had an RCI on our side  
10 that used 3PA to get the data out, but then there's all  
11 kinds of formatting that you got to worry about to get  
12 it into the right format to go into the reverse risk  
13 system.

14          Q. Let me see if I understand the explanation.  
15 When you referred to reverse risk, was it ultimately  
16 the plan that Reynolds would put reverse risk on to the  
17 CDK DMSes through CDK's 3PA program?

18          A. No. It was -- the plan was and is, it still  
19 exists where we use 3PA to extract the accounting data  
20 and phase it into the reverse risk system which runs in  
21 the cloud to provide the capability to the dealerships  
22 to, you know, one button and you get to see all kinds  
23 of things. But it was never, ever thought to be a  
24 product that would actually run on an ADP DMS system.  
25 That would be -- I don't understand how the ADP DMS

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1 system is structured, how it's architected. And I  
2 don't want to know. So to even think about doing  
3 anything like that would have been, you know,  
4 unthinkable.

5 Q. But ultimately there were Reynolds applications  
6 that went in through the 3PA program; isn't that  
7 correct?

8 A. Well, this one here is an example of that, but  
9 the sole purpose was to extract data. Not actually  
10 have the product run on an ADP system. It was purely  
11 to extract data and lots of it.

12 Q. Did it extract it through the 3PA program  
13 ultimately?

14 A. Yes. Today it costs \$350 a month per dealer.  
15 Not cheap.

16 Q. At the very bottom of the exhibit on this page,  
17 CX 1151-002, the sentence reads, "ADP would be open to  
18 adopting and advocating common industry standards  
19 and/or recommendations."

20 What was the common industry standards that you  
21 wanted ADP to be open to adopting?

22 A. I interpret this one a little bit differently.  
23 I think that ADP is making a suggestion to adopt common  
24 industry standards, and that's not something we were  
25 ever interested in doing because I think common

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1 industry standards, that translates to me as somebody  
2 else gets to decide how things work besides us.

3 And well, this requires more explanation.

4 There has been attempts to establish common industry  
5 standards, and when it first came up, we thought that  
6 would be really cool. The problem is that  
7 manufacturers participate, and the manufacturers are  
8 big guns, and it started almost from the very first the  
9 manufacturers will say, yeah, we want to adopt industry  
10 standards, however, we want this little part to be done  
11 differently. So there are many variants of what common  
12 industry standards are for car dealers. That is, as  
13 far as we are concerned, madness from a programming  
14 standpoint. That means that there is that many more  
15 balls we got to keep in the air. And therefore, this  
16 thought here about common industry standards, I mean,  
17 that went nowhere. It was dead on arrival.

18 Q. Was the notion that the common industry  
19 standard would be that both CDK and Reynolds would take  
20 the position that data should only go from the DMS  
21 provider and not be provided by a third-party  
22 integrator?

23 A. There was no discussion along those lines at  
24 all.

25 Q. That was Reynolds' position at this time; is

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1     that correct?

2           A.   Well, Reynolds' position at that time was that  
3     there would be no third-party access to our boxes.

4           Q.   And that's ultimately the position that CDK  
5     came down with; is that correct?

6           A.   Ultimately they did. I was surprised that they  
7     made that change some period of time after all this was  
8     done.

9           Q.   And that would have been a common industry  
10    standard that would have been beneficial to Reynolds in  
11    this 2013 time period because of the factors we've  
12    talked about before, how CDK was marketing against  
13    Reynolds, saying we are different, we have a different  
14    standard on security, you should join us, you should  
15    hire us to be your DMS provider, you should not go to  
16    Reynolds, and that would be a major benefit to Reynolds  
17    if that -- if they professed a different standard and  
18    turned 180 degrees in the other direction and stopped  
19    doing that market messaging to you?

20          A.   Again, none of that was under any consideration  
21    in this whole process right here. I fully expected to  
22    have dirty tricks come out of the relationship as far  
23    as this whole process is concerned with ADP. I was  
24    looking forward to being out first and foremost and not  
25    thinking about anything else.

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1 Q. What was your reference to dirty tricks in the  
2 answer?

3 A. Well, a classic dirty trick in this kind of  
4 situation which, fortunately, didn't happen but could  
5 have happened, where they start sending data to us  
6 coming out of ADP systems and stuff is transposed. Not  
7 much, but just a little. Or some stuff is left out or  
8 extra junk put in. And it's, oh, I'm sorry, we had a  
9 programmer that screwed up. Okay, tell me about that.  
10 Those are dirty tricks that happen.

11 Q. So in that example, you are referring to a  
12 situation where Reynolds would be having a Reynolds app  
13 on a CDK dealer and somehow that dealer would not get  
14 satisfactory results from its Reynolds app because of  
15 an alleged programming issue; is that correct?

16 A. That certainly, but what I was more focused on  
17 was in this transition period where we are endeavoring  
18 to get dealerships that have been getting their data by  
19 extraction processes through RCI. Well, if they mess  
20 up the extraction processes while all this transition  
21 is going on, that would be a dirty trick.

22 Q. And you say pretty much everything, the  
23 transition went smoothly from your perspective?

24 A. That fear did not come to reality.

25 Q. We are still on CX 1151 looking at the first

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1 page of the exhibit. There is in the middle of the  
2 page an e-mail from Mr. Schaefer to you, and he starts  
3 out his e-mail to you with the phrase, "per our  
4 conversation." Was this a conversation you had with  
5 Mr. Schaefer about the substance of Mr. Gardner's  
6 e-mail?

7 A. I don't know specifically about Mr. Gardner's  
8 e-mail, but it was about the whole issue and situation.  
9 And what Bob Schaefer wanted is he wanted in writing  
10 what he was empowered to do. And Bob Schaefer is a  
11 quite talented person. In addition to the fact that  
12 some of his basketball school records at Wright State  
13 University still stand is kind of amazing.

14 But he was actually in charge of development  
15 for Reynolds in the period of time before I got there.  
16 And actually, when I got there, supposedly he was --  
17 his neck was on the chopping block. He was going to be  
18 fired. And the fact that I came along and I said, you  
19 know, you guys got to be crazy; this guy is a bright  
20 guy; he knows all kinds of stuff; he invented the hub,  
21 he owns a patent on the hub, absolutely not.

22 What I think happened was there had been a huge  
23 development failure at Reynolds before we got there.  
24 They had decided to build a whole new DMS, and they  
25 refused to allow the existing programmers at Reynolds

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1 to participate in the building of this new system.  
2 They felt like they had the need for programmers  
3 experienced in the new ways of programming, and they  
4 wouldn't let the people that really knew everything  
5 participate. They started with a whole bunch of fresh  
6 programmers that didn't understand automotive at all.  
7 They spent probably a quarter of a billion dollars for  
8 a system which ultimately failed.

9 They actually had to withdraw it from the  
10 marketplace. They had to make special provisions to  
11 basically buy dealerships out of their contracts and  
12 convert them back to Era. I would imagine probably,  
13 though I have never talked to him about it in detail,  
14 Bob Schaefer had some choice things to say about that  
15 whole process, because what had happened was that the  
16 new programmers knew how to build pretty screens,  
17 pretty reports, but they had no knowledge of all the  
18 interior logic that had been built up over the years.  
19 And so when a dealer converted from Era to this new  
20 system, things didn't work.

21 Q. What was the new system called?

22 A. It was called Generations. Scott, do you  
23 remember?

24 MR. CHERRY: That's correct.

25 THE WITNESS: Generations is correct, okay.

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1 But at any rate, my observations and decisions as far  
2 as Bob Schaefer is concerned turned out to be exactly  
3 correct. He's been a very is valuable person.

4 BY MR. ABRAHAMSEN:

5 Q. And then you sent him back an e-mail which  
6 says, "You have authority to pursue discussions with  
7 ADP on these subjects as per our conversation."

8 A. Yeah, this is where the point about him almost  
9 getting fired when I first got there. Evidently, he had  
10 had his legs cut out underneath him by the previous  
11 administration. And he was very, very sensitive about  
12 whenever he has something to do, that he has  
13 authorization to do it. So any time somebody climbs  
14 him about what he's doing, he can open his drawer and  
15 say, I got the letter, see, which is a sad situation  
16 for that level of lack of trust. But he started that  
17 process with me, and I felt like he was so sensitive  
18 about it that we would continue that process.

19 Q. Was it your understanding that he would then  
20 pass on your e-mail to people at CDK so that they would  
21 know that you had weighed in on it?

22 A. I don't think that -- that's not what the point  
23 was. The point was that within our organization  
24 anybody that questioned his authority to discuss things  
25 with ADP, he's got the letter or the e-mail that says

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1 that he's authorized. It would not cover him divulging  
2 things to CDK at all.

3 Q. You mentioned in a prior answer that the market  
4 messaging position that Mr. Gardner had put in his  
5 e-mail was dead on arrival. Was there some reason you  
6 didn't address that in your e-mail back to  
7 Mr. Schaefer, that you thought that particular  
8 provision was dead on arrival?

9 A. All this is so long ago, I don't remember if I  
10 thought about it or not thought about it.

11 Q. Did you talk to Mr. Schaefer about the  
12 marketing message, the market messaging part of  
13 Mr. Gardner's e-mail?

14 A. I don't specifically recall that.

15 MR. COHEN: Dana, I'm just going to lodge a  
16 clarification. I may be wrong, but I thought that his  
17 dead on arrival testimony related to the industry  
18 standards provision. But I could be wrong about that.  
19 If I'm right, then you have mischaracterized his  
20 testimony. If I'm wrong, my objection is meaningless.  
21 But anyway, I simply wanted to let the record reflect  
22 my understanding of that prior testimony.

23 BY MR. ABRAHAMSEN:

24 Q. And I will try to clarify the record. The  
25 market messaging paragraph states that ADP would be

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1 open to adopting and advocating common industry  
2 standards.

3 MR. COHEN: We are on the same page, then.

4 BY MR. ABRAHAMSEN:

5 Q. So when I phrased my question as whether you  
6 spoke with Mr. Schaefer about market messaging, did you  
7 understand my question to encompass the part of that  
8 paragraph that talked about advocating common industry  
9 standards?

10 A. Again, my answer is the same. We are now down  
11 really into the weeds, and my memory just is not that  
12 good.

13 Q. So just to make sure the record is clear on  
14 this point of common industry standards, you don't  
15 recall whether or not you talked to Mr. Schaefer about  
16 that part of Mr. Gardner's e-mail; is that correct?

17 A. That's correct.

18 MR. COHEN: Thank you. I think that was an  
19 unnecessary detour on my part, but I appreciate the  
20 clear record.

21 BY MR. ABRAHAMSEN:

22 Q. I flipped the page on the market messaging  
23 paragraph and realized there was a reference at the end  
24 on the next page that I had overlooked when we were  
25 speaking about this before in CX 1151-003. The

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1 paragraph about market messaging ends with a  
2 parenthetical where Mr. Gardner is giving an example.  
3 His example is "through or in conjunction with an  
4 industry organization such as NADA."

5 Was there discussion between you and  
6 Mr. Schaefer about whether it would be satisfactory to  
7 Reynolds to do a common market messaging through NADA?

8 A. I'm sorry, but my answer is the same. This is  
9 an exquisitely fine detail that I'm sorry I just don't  
10 recall.

11 Q. Let me ask you a broader question. Taking our  
12 eyes off this exhibit for a moment so I can broaden the  
13 question, was there a time in the 2013 to 2015 time  
14 period where you were interested in CDK and Reynolds  
15 getting together in a public forum such as NADA and  
16 making a joint announcement about market messaging as  
17 it relates to data security?

18 A. I was not really interested in doing that at  
19 all. I don't trust the people at ADP. Never have. I  
20 have been competing robustly against them since 1975.  
21 I don't want to do anything with them that I can  
22 possibly avoid. It has to be a really, really good  
23 opportunity.

24 Q. Let me ask you to take a look at an exhibit  
25 we've marked as CX 4035. I'll ask you to take a look

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1 at it. CX 4035 bears Bates REYCID0263974.

2 A. (Reviewing document.)

3 Q. My understanding is that these are notes that  
4 you made to yourself for a telephone call with  
5 Mr. Anenen; is that correct?

6 A. That's correct.

7 Q. There is an indentation on the first page of  
8 the notes that have five subparagraphs, and I wanted to  
9 ask you about the bottom of the five. It begins with,  
10 "Therefore, I want a no-charge access to ADP systems  
11 for the next 20 years." Do you see that?

12 A. Yes.

13 Q. And what was your ask here in terms of the  
14 20 years?

15 A. The ask was that I was to be able to -- for  
16 Reynolds products, for instance, like reverse risk, the  
17 reverse risk, we didn't know anything about that at the  
18 time. That was a much, much later event. To be able  
19 to access 3PA's approach to ADP's systems for no charge  
20 in view of the fact that they have been taking theirs  
21 and they had been paying nothing for over 20 years.  
22 They've been extracting data on our systems.

23 Q. And what did Mr. Anenen have to say about that  
24 proposal?

25 A. I don't know. I didn't talk to him directly

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1 about that proposal. He, unsurprisingly, was not happy  
2 with that. But I was pretty adamant.

3 Q. At the end of that same paragraph, you make the  
4 point that you want it used only for a product that  
5 Reynolds offers.

6 A. Yeah, this is in no way to be considered a data  
7 extraction for resale to third parties. It was only to  
8 facilitate a product that we provide to dealerships  
9 that use CDK and that's it.

10 Q. Why was that a significant point for you to  
11 make?

12 A. Well, because I would be hypocritical if I  
13 acted otherwise because what I'm doing is I'm demanding  
14 the rules that they have to follow. Therefore, it's  
15 appropriate that I need to follow them too.

16 Q. The third slash down in this same indented  
17 paragraph states that ADP has wrongly taken advantage  
18 of Reynolds in the marketplace over the issue of data  
19 security and has cost us in the millions.

20 Is that the issue we have been speaking about  
21 earlier where CDK was selling against Reynolds on this  
22 issue of data security?

23 A. Yes.

24 Q. The third slash mark from the bottom of the  
25 first page of this exhibit speaks again about

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1 indemnification, and it reads, "indemnification has  
2 been dealt with."

3 Does this refresh your recollection at all  
4 about what Reynolds had done with regard to  
5 indemnification that had sort of cleared the way for  
6 this -- what had previously been a stumbling block to  
7 now be dealt with?

8 A. I'm sorry, I don't recall.

9 Q. The second page of the exhibit, CX 4035-002,  
10 the first sentence on that page says, "We have held up  
11 on a large release of security enhancements for over  
12 two months to see if there was a deal to be worked  
13 out."

14 What security enhancements were you referring  
15 to?

16 A. There were a bundle of security enhancements.  
17 I don't know specifically. As a matter of fact, I  
18 don't know how any of them -- well, most security  
19 enhancements, I don't understand how they work.  
20 There's been a couple of simple ones such as we verify  
21 that the employee status of a person that holds access  
22 to a Reynolds computer system by going over the payroll  
23 system and checking to see if they are on payroll. If  
24 they are not on the payroll system, that's a good  
25 indication they are a third party. So that kind of

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1 security enhancements I understand. That's pretty  
2 simple and straightforward. But the rest of them get  
3 pretty exotic, and I'm frankly -- I would love to have  
4 time to sit with the programmers to understand exactly  
5 what they do, but that's a luxury that I don't get to  
6 have.

7 Q. And am I reading this correctly, you'll correct  
8 me if I'm wrong, but you are saying you have held up  
9 the security enhancements, you have held them up in the  
10 hopes that you'll be able to figure out a way to not  
11 apply them to the CDK integrations that are going on?  
12 Is that accurate?

13 A. Yes, because that would dislocate a lot of  
14 customers and there would be a lot of heat and anger  
15 over the whole situation. These two months worth of  
16 security enhancements that are being held up are the  
17 ones that would finally disable them, that would  
18 disable ADP access to our boxes.

19 Q. Right. So it was getting back to what we  
20 talked about earlier this morning that the technology  
21 was there to block, but the business problems were  
22 still a problem.

23 A. Exactly.

24 Q. How did you know that -- I'm looking at the  
25 second-to-last bullet on this page. You make a

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1 reference here to hundreds of third parties. How did  
2 you know how many third parties DMI and Integralink  
3 were working with?

4 A. That number had been mentioned in the  
5 discussions that had been ongoing between Bob Schaefer  
6 and the ADP people. I was not -- prior to this whole  
7 process, I was not aware of how many they had. I  
8 presumed it to be a pretty good size because they had  
9 been in the business of doing this for 20 years or  
10 more.

11 Q. During the phone call with Mr. Anenen, did you  
12 talk about other integrators that were in the market  
13 such as Authenticom or any of the others?

14 A. No.

15 Q. At this time point, I'm going to go back to the  
16 paragraph we started out talking about, the one that  
17 referenced the next 20 years. Was there any hesitancy  
18 on the part of CDK to allow Reynolds to use 3PA to  
19 access its apps on to the CDK DMSes?

20 A. There's never been occasion for a conversation.  
21 And frankly, when all this was going on -- and  
22 remember, this is a list of talking points for a  
23 telephone conversation that I had hoped was going to  
24 happen within a month or two. It didn't happen for  
25 seven or eight months. But frankly, I didn't even

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1 understand that they had a 3PA process at all until  
2 further on in this particular process.

3 Q. What was your sense of why the process was  
4 taking so long to play out?

5 A. They were stalling.

6 Q. Why would they be stalling?

7 A. Well, frankly, they didn't want this all to  
8 happen at all. They were being forced into it. So  
9 therefore, what they did is they drug their feet. And  
10 as is typical in a negotiation that you give the other  
11 party an opportunity to act in good faith presumably to  
12 start with. When it doesn't quite work out that way,  
13 then it becomes much more difficult. It becomes  
14 tougher.

15 Q. Were there instances where you threatened CDK  
16 if they didn't move forward on this agreement?

17 A. Yeah.

18 Q. What did you threaten them with?

19 A. I said, look, you are going to wake up one  
20 morning and nothing is going to work as far as your  
21 accessing of the Reynolds boxes. And so therefore,  
22 whatever you are supposed to be doing for your  
23 customers, you are going to be up a tree, which is a  
24 very serious decision, and I thought long and hard  
25 about it, but I didn't want to cause the upset that it

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1 would have caused in the marketplace generally. My  
2 wants were simple. I wanted them out of our boxes.  
3 And it took me a while to get to the point from a  
4 resolution standpoint that if they didn't do it, I was  
5 going to shut them off.

6 Q. Did you make those representations about  
7 shutting CDK off directly to Mr. Anenen?

8 A. Yes.

9 Q. Did you make those representations to anyone  
10 else at CDK?

11 A. No.

12 Q. Did you have conversations with anyone at CDK  
13 other than Mr. Anenen on the subjects that we have been  
14 talking about today?

15 A. No.

16 Q. Did you ever talk to Mr. Workman?

17 A. Not about these subjects. And Ron Workman, I  
18 would -- one of the few decent people in that  
19 organization. A good guy.

20 Q. How did you know Mr. Workman?

21 A. Well, the setting up of the ODE relationship.  
22 He worked on the contracts on his side. I worked on  
23 them from our side.

24 Q. How long have you known Mr. Workman?

25 A. That's probably in the ten-year park.

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1 Q. I'm going to ask you a series of the same  
2 questions, but I'm going to ask you whether the  
3 conversations took place between Mr. Schaefer and  
4 anyone at CDK. Are you aware of whether Mr. Schaefer  
5 conveyed these sort of threats, that there would be  
6 blocking of the CDK DMSes if progress wasn't made on  
7 the contracts that we have been talking about?

8 A. I would feel quite certainly that he did have  
9 conversations that covered those subjects because there  
10 wasn't -- my meeting with Steve Anenen and then a long  
11 period of silence from our side. People on the ground  
12 doing the work who were personally invested in how  
13 everything worked, I'm sure that they got talked to by  
14 Bob Schaefer.

15 Q. The last bullet on the first page of CX 4035  
16 makes reference to Mr. Workman and that he has  
17 reported -- I understood it to mean he had reported to  
18 you that your interface request could only be approved  
19 by Mr. Anenen. Am I reading that correctly?

20 A. Yes, but as far as I don't think Ron Workman  
21 reported that to me. He probably reported it to Bob  
22 Schaefer because again, I was not talking directly to  
23 anybody at CDK other than Steve Anenen.

24 Q. So Mr. Workman could have made that  
25 representation to Mr. Schaefer, and then it would have

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1     come up to you through Mr. Schaefer. Is that my  
2     understanding?

3             A. That is correct.

4             (Discussion off the record.)

5             BY MR. ABRAHAMSEN:

6             Q. A little earlier today we were talking about  
7     the market message that DMS providers conveyed to the  
8     market. We were talking about Reynolds' long-standing  
9     position on data security, and we talked some about how  
10    CDK had a different message to the market about its  
11    view, I think you used the phrase laissez-faire view on  
12    market security.

13            My question is what was the message on data  
14    security that was being conveyed by the other DMS  
15    providers such as Dealertrack and Autosoft and so on?

16            A. Frankly, I'm not aware. From a DMS provider  
17    standpoint, Dealertrack, their DMS is small and weak.  
18    From the facility standpoint, it's kind of a get-by  
19    product that works for small dealers. We don't hear  
20    much about them at all in the marketplace.

21            As far as the others, there's probably four or  
22    five others, but frankly, we don't pay any attention to  
23    those people because they are in a different market.  
24    They are selling to small dealers who don't really need  
25    very sophisticated systems.

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1           Q. Let me ask the question a slightly different  
2 way. Was there -- did you have a sense in this  
3 2012/2013/2014 time period that Reynolds was unique in  
4 that it was offering a market message on data security  
5 about being strong and vigilant about third-party usage  
6 of user IDs and passwords and so on, and it was sort of  
7 alone, that all the other DMS providers had a different  
8 market message?

9           A. I understood that to be the case, that we were  
10 different and we were the only ones that were  
11 different. But that's, as far as I'm concerned, a  
12 perfectly satisfactory situation because I'm convinced  
13 the way we are doing it is the right way. And the  
14 other folks are doing it the wrong way, and the fact  
15 that there's other folks doing it the wrong way means  
16 nothing to me. Above all else, I want our stuff to be  
17 right.

18           MR. ABRAHAMSEN: Why don't we go off the record  
19 for today, and we'll resume tomorrow morning at 9:00 in  
20 the same location.

21           (Whereupon, the proceedings at 1:02 p.m., were  
22 adjourned.)

23

24

25

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CERTIFICATE OF REPORTER

I, Deborah Wehr, do hereby certify that the foregoing proceedings were taken by me in stenotype and thereafter reduced to typewriting under my supervision; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were taken; and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.



Deborah Wehr, RPR

Notary Public



1 FEDERAL TRADE COMMISSION  
2  
3 In the Matter of: )  
4 CDK GLOBAL, )  
5 a corporation, ) File No.  
6 And ) 171-0056  
7 REYNOLDS AND REYNOLDS, )  
8 a corporation.  
9

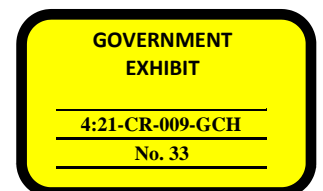
10  
11 Thursday, September 19, 2019  
12

13 Sheppard, Mullin, Richter & Hampton, LLC  
14 2099 Pennsylvania Avenue, N.W.  
15 Washington, D.C. 20006  
16

17 The above-entitled matter came on for  
18 investigational hearing, pursuant to notice, at 9:05  
19 a.m., for the testimony of:  
20

21 ROBERT BROCKMAN  
22  
23  
24

25 Reported by: Deborah Wehr, RPR



FTC-0000111

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1 P R O C E E D I N G S

2 - - - - -

3 MR. ABRAHAMSEN: We will resume today our  
4 examination of Mr. Brockman. We have as counsel for  
5 the Federal Trade Commission, William Lanning. And  
6 Mr. Ansaldo, who was with us yesterday, is not present  
7 today. But otherwise the attendance in the room is the  
8 same as yesterday. And we are back on the record.  
9 Whereupon --

10 ROBERT BROCKMAN,  
11 a witness, called for examination, having been  
12 previously duly sworn, was examined and testified as  
13 follows:

14 EXAMINATION

15 BY MR. ABRAHAMSEN:

16 Q. Mr. Brockman, good morning.

17 A. Good morning.

18 Q. I remind you, you are still under oath.

19 A. I understand.

20 Q. We were talking yesterday about the different  
21 approaches Reynolds had when it came to its idea about  
22 security and how it differed from the way the  
23 laissez-faire attitude that CDK had when it came to  
24 security. And I wanted to ask whether it would have  
25 been beneficial for Reynolds' business if CDK changed

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1 its philosophy. You mentioned yesterday that CDK was  
2 costing Reynolds millions of dollars by hacking in to  
3 your system, and they were using the fact that you had  
4 a closed system as a way to tell dealers that they  
5 should switch DMSes over to the CDK DMS. So if CDK  
6 changed its business practice and adopted a practice  
7 more like Reynolds' practice of not allowing third  
8 parties on its system, would that benefit Reynolds?

9 A. I hadn't really thought about that, but  
10 certainly they would not be able to declare us fools  
11 and idiots. And to that extent, I'm sure it would have  
12 been beneficial. They would not have kept throwing the  
13 way we were doing things up in our face in sales  
14 situations.

15 Q. And it would have vindicated your position on  
16 the importance of security for data as well?

17 A. Certainly it would. There's no question.

18 Q. Let me ask you to take a look at a document  
19 we've labeled CX 1143 and ask you to take a look at it.  
20 CX 1143 has Bates CDK\_CID\_01535307. It's a two-page  
21 exhibit.

22 A. Yes, I find the next-to-the-last paragraph  
23 somewhat amusing.

24 Q. I'm sorry, you are talking about the  
25 next-to-the-last paragraph of the first page of the

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1 exhibit?

2 A. Of the first page. It's the one that says, I  
3 should point out, we have not been accessing R&R  
4 systems for decades, as you said. Our business in  
5 access R&R systems came to us through an acquisition.

6 I didn't think that acquiring something  
7 automatically put them through the holy water.

8 Q. I appreciate that. His point about the number  
9 of years that CDK had been accessing the Reynolds  
10 system is a response to your e-mail to him; is that  
11 correct?

12 A. Yes, I believe that's correct.

13 Q. So the record is clear, the Exhibit CX 1143 has  
14 as the second page of the exhibit the first e-mail in  
15 the e-mail and responsive e-mail. And the first e-mail  
16 is from Mr. Brockman to Mr. Anenen on June 30, 2014.  
17 And the first sentence of your e-mail to Mr. Anenen  
18 states, "I think there is some confusion surrounding  
19 the issue that I called you about last week."

20 Do you see that?

21 A. Yes.

22 Q. So is the call that you are referring to in the  
23 first sentence of the second page of this exhibit the  
24 telephone conversation that we discussed yesterday?

25 A. I'm not sure that I recall exactly what was

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1 discussed yesterday as far as which telephone call, if  
2 you could refresh my recollection in that.

3 Q. I believe it's CX 4043.

4 MR. COHEN: Here we go. I have 4043 in front  
5 of him as well.

6 THE WITNESS: This is my list of talking points  
7 for an eventual telephone conversation.

8 BY MR. ABRAHAMSEN:

9 Q. When you said this, you are referring to  
10 CX 4043?

11 A. That's right.

12 Q. Had you had any other telephone calls with  
13 Mr. Anenen in this June 30th time period aside from the  
14 one call you reference in your e-mail?

15 A. As best as I can recall, that was the only one.  
16 Mr. Anenen was a hard person to get ahold of.

17 Q. The response from Mr. Anenen is the first page  
18 of CX 1143, and I would like you to take a look at the  
19 indented part of the paragraph on the first page of the  
20 exhibit and the first hash mark under the sentence that  
21 begins with, Based on my assumption, it starts, "For  
22 ADP", do you see that sentence?

23 A. I'm sorry, I don't know if I'm looking at the  
24 right thing or the right side of it.

25 Q. Yes, CX 1143.

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1 A. Dash 001?

2 Q. Yes.

3 A. Excuse me, I was on the wrong page. And your  
4 question?

5 Q. I was going to direct your attention to the  
6 paragraph that's indented, and it's the first paragraph  
7 under, "Based on my assumption".

8 A. This is the one that starts off, "For ADP to  
9 provide integration to Naked Lime"?

10 Q. Correct. What did you interpret him to mean  
11 when he talked in that paragraph about providing  
12 integration to Naked Lime, having to go through a set  
13 of defined, documented and thoroughly tested processes?

14 A. I interpreted that to mean what he was  
15 describing was a 3PA process.

16 Q. And had you talked to him about having your  
17 applications go through 3PA prior to receiving this  
18 e-mail?

19 A. I had not personally. I would suspect by the  
20 context that my people had been talking to his people.

21 Q. But at this time, by the time you read this  
22 e-mail, CX 1143, you, at that point, were aware that  
23 CDK had a 3PA program?

24 A. Yes, but my people had been talking about it to  
25 me.

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1           Q. And he talks here about not only for Reynolds  
2 and Reynolds, but he also makes reference in the first  
3 sentence for ADP to provide integration to Naked Lime  
4 or R&R or any third party. What did you interpret him  
5 to be meaning when he said that for any third party  
6 they would have go through 3PA?

7           A. I don't know that I paid a lot of attention to  
8 that particular line. What I was more interested in is  
9 that they were, as of this date, clearly getting behind  
10 the process of the stand down and they were describing  
11 things that they needed to have, which I considered to  
12 be reasonable as part of the soft landing.

13          Q. So you thought it was reasonable for him to  
14 expect you to go through 3PA for your apps?

15          A. Yes.

16          Q. And with respect to his reference, and he says  
17 it twice in this paragraph, in the first line he talks  
18 about how this has to apply to any third party. And  
19 then the very last sentence of this paragraph says,  
20 "Every third party must operate within these  
21 parameters." Did you understand that sentence to mean  
22 that CDK was no longer going to adhere to its  
23 laissez-faire attitude about third parties?

24          A. Clearly this e-mail represented -- it may not  
25 have been a change, but my understanding of where they

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1     were at from a security standpoint, it was obviously  
2     much different than what I had seen before.

3           Q. And what did you take his sentence in the very  
4     next indented paragraph, in other words, the one that  
5     begins after the second hash mark, he's talking again  
6     about ADP's third-party approval and how they have been  
7     developed. And the last sentence is what I would like  
8     to -- the last two sentences are what I would like to  
9     point your attention to. The second-to-last sentence  
10    of the paragraph reads, "I am sure you will appreciate  
11    the need to have R&R follow the same process and meet  
12    the same standards. I believe that" -- I think the  
13    word "this" should be here -- that "this is the same  
14    point you make publicly."

15           Did you interpret that to mean that he was  
16    moving away from his position about -- his  
17    laissez-faire position about allowing third parties on  
18    to his system and that he was making reference to the  
19    fact that this is something that you had made public  
20    statements about?

21           A. My interpretation of what this paragraph is all  
22    about is that the 3PA system had been around for a  
23    while but I had not known about it. And evidently,  
24    it's something that they provided to very large  
25    customers, large groups, chain dealerships. Auto

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1 Nation, of course, is their largest customer because  
2 it's the biggest chain dealer operator in the whole  
3 country.

4 What we are seeing here is a well-developed  
5 process, but I had not been aware of that before this.  
6 And to see what all he wrote here, actually it's  
7 comforting in that the worst situation would be if  
8 there were no process at all and they would have to  
9 build one from scratch. Looking at this one, you can  
10 say, well, this has been running for a while and it's  
11 well documented. It looks like it would be a  
12 reasonable process to interface using what he's laying  
13 out here.

14 Q. And he's kind of making a point, if I'm  
15 interpreting this correctly, that almost explaining why  
16 maybe you haven't heard about it, that you have been  
17 very public about your position when it comes to third  
18 parties accessing your DMS, and he's kind of hinting  
19 that you may not have known this because we haven't  
20 made it public yet that we are going to take the same  
21 position that you are going to take on third-party  
22 access. Did you interpret this e-mail that way?

23 A. I don't know that I thought that deeply about  
24 it. It was mainly a sigh of relief on my part that we  
25 weren't going to have to start from scratch to build up

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1 an interface.

2 Q. The next paragraph -- the next paragraph on the  
3 first page of this paragraph that's not indented  
4 begins -- and this is the one that you referenced  
5 before I had even asked a question about the exhibit,  
6 the "I should point out" paragraph, and I would like to  
7 turn your attention to the last two sentences of that  
8 paragraph. The second-to-last sentence says, "I would  
9 be remiss not pointing out that R&R is accessing the  
10 ADP system through a contract with Authenticom and has  
11 been doing so for quite some time without an agreement  
12 from ADP. We need to clean this up as well."

13 What did you interpret those two sentences to  
14 mean?

15 A. Well, there is no question we had been using  
16 Authenticom on a very small scale to provide service  
17 reminder follow-up data, addresses and names of  
18 customers that own vehicles that sign up to have an oil  
19 change or have a 100,000 mile checkup or whatever.

20 As far as what arrangements that Authenticom  
21 had, that was beyond our vision. We don't get to see  
22 what Authenticom does or was doing at that time. And  
23 what he's saying here in so many words is that  
24 Authenticom doesn't have a contract with us.  
25 Authenticom is acting as a hacker into CDK's systems.

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1 And he's being fairly gentle about pointing that out  
2 because we truly didn't understand what Authenticom was  
3 doing, what permissions they had and which ones they  
4 didn't.

5 Q. When he said "we need to clean this up as  
6 well", is he suggesting that you need to stop using  
7 Authenticom to access the CDK system?

8 A. That was my interpretation.

9 Q. And did this suggest to you that CDK was moving  
10 away from its laissez-faire attitude about third  
11 parties and was going to take a stricter approach in  
12 terms of not allowing third parties to hack into its  
13 system?

14 A. I wouldn't say that I perceived that at this  
15 point. It wasn't until they started publicly  
16 announcing 3PA that I took notice.

17 Q. Why would he be e-mailing you that you needed  
18 to clean this up as well if CDK wasn't interested in  
19 stopping the use of third-party integrators on its  
20 system?

21 A. Again, I don't think I thought that deeply.  
22 This was -- at this stage of this project, you know, my  
23 efforts were pretty much done because I forced the  
24 issue with Steve Anenen. And after that I'm backing  
25 away because I'm on to whatever the next hill is.

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1 Q. This notion that Reynolds had been using  
2 Authenticom and that CDK was going to ask you to clean  
3 that situation up, was that a topic that you and  
4 Mr. Anenen had discussed on the telephone?

5 A. I'm sorry, I don't recall whether we did or  
6 didn't. But it was absolutely clear what he was saying  
7 in this letter.

8 Q. That the third-party integration that had been  
9 going on would not be allowed to continue?

10 A. Yes.

11 Q. Was that something you talked to Mr. Anenen  
12 about, whether CDK was also, in addition to seeing to  
13 it that Reynolds stopped using third-party integration  
14 on its system that CDK was also going to stop being so  
15 laissez-faire about other parties using third-party  
16 integration on the CDK system?

17 A. Again, I'm not perceiving that far deep into  
18 this letter. I'm -- again, I think I'm out of this  
19 project and I'm on to the next one.

20 Q. I can't remember how I started my question, so  
21 I'm going to maybe ask the same question, but I don't  
22 think so.

23 MR. COHEN: You have asked the same question  
24 for about 45 minutes in several different ways, and I  
25 haven't objected once and I'm not going to. But the

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1 answer is not going to change.

2 THE WITNESS: Can I declare a timeout?

3 (A recess was taken.)

4 BY MR. ABRAHAMSEN:

5 Q. Before the break we were talking about CX 1143  
6 and how it had followed a telephone conversation you  
7 had had with Mr. Anenen. In that telephone  
8 conversation with Mr. Anenen, had he said anything that  
9 led you to believe that CDK was no longer going to take  
10 a laissez-faire attitude about third-party integration  
11 on its DMS system and was going to be adopting a system  
12 where they would no longer permit third parties to  
13 integrate on its system?

14 A. We never had any conversation about that. When  
15 I finally learned about it, I wasn't surprised because  
16 I thought the way they were doing it before was really  
17 stupid from a security standpoint. And probably from a  
18 general background statement, I consider really  
19 everything that CDK does to be inferior. And that's --  
20 I have been competing with them now since 1975. So  
21 therefore, I don't spend any time, quote, watching what  
22 CDK does. I find it humorous that they turn over chief  
23 executive officers as often as they do. But other than  
24 that, as far as operationally or technically, whatever,  
25 I pay no attention to what they do.

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1 Q. You mentioned in a prior answer that you had  
2 learned about CDK's 3PA program from people who report  
3 to you. Who would that have been?

4 A. Probably Bob Schaefer.

5 Q. Let me ask you to take a look at a document  
6 we've marked as CX 4036. The Exhibit CX 4036 has Bates  
7 REYCID0264663, and my understanding is that these are  
8 notes that you prepared for yourself to deliver remarks  
9 at a sales meeting on July 14, 2014; is that correct?

10 A. Yes, that's correct.

11 Q. I wanted to ask you to take a look at the  
12 second page of the Exhibit CX 4036-002, and at the  
13 bottom of the page there is a paragraph titled  
14 Security. Do you see that?

15 A. Yes.

16 Q. The second bullet down talks about the early  
17 stages of negotiating an agreement, and it says it's a  
18 similar agreement. When you say similar agreement, is  
19 that a reference to the reference in the first bullet  
20 that Reynolds had reached an agreement with  
21 Mr. Batista?

22 A. Yes, the most important part of which is that  
23 Phil Batista, since lost in court, was no longer going  
24 to be hacking Reynolds' sites and there was going to be  
25 an orderly stand down. And that was the way it looked

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1 like the agreement with ADP would take place. It would  
2 be similar.

3 Q. So you had had a court case going against  
4 Mr. Batista, and then ultimately you settled that court  
5 case?

6 A. I don't know who brought it in the first place,  
7 whether it was us or whether it was Mr. Batista. And  
8 the final disposition, whether it was a settlement or  
9 whether it was an agreed verdict, I'm not aware.

10 Q. And the reference in the first bullet "reached  
11 an agreement where Phil is getting out of the  
12 business", is that what you would call a wind down  
13 agreement with Mr. Batista?

14 A. Yes.

15 Q. And were the terms basically that he would stop  
16 doing integration on Reynolds but he would do so in a  
17 way that allowed his clients to continue to do the  
18 integration for a period of time until they could move  
19 into the RCI program?

20 A. Yeah. It was an orderly stand down would be  
21 the way I would characterize it.

22 Q. And Mr. Batista, his company is SIS?

23 A. Yes.

24 Q. The third hash mark down under security on  
25 CX 4036-002 states, "ADP seems to be becoming aware of

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1 the laws and liabilities involved." Do you see that?

2 A. This is in the last section titled Security?

3 Q. It's the third hash mark down.

4 A. Yes, I see that.

5 Q. What did you mean by ADP seems to be becoming  
6 aware of the laws?

7 A. The very existence, which was in relatively  
8 recent news to me, was the fact that the 3PA program  
9 existed at all and the fact that they were talking  
10 about that. Again, that was new news to me or  
11 relatively new.

12 Q. What laws were you referring to?

13 A. The ones -- and I should know the names of  
14 them, but the ones that were discussed in the document  
15 produced by NADA.

16 Q. And had you talked to Mr. Anenen about the  
17 applicability of those laws?

18 A. No. I just had disagreed with the way it was  
19 interacting with our systems.

20 Q. But you told your sales force that ADP seems to  
21 be becoming aware of the laws. What was your basis for  
22 saying that?

23 A. The fact that I had become aware of the 3PA.

24 Q. What did 3PA have to do with laws?

25 A. Well, 3PA is, as we've seen in just prior

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1 documents, is very organized, very structured, has  
2 contracts. The 3PA system provides for ADP to  
3 understand exactly what data is being extracted from  
4 systems. And I think they probably started to become  
5 aware of what was happening from a hacking standpoint  
6 of their DMS system.

7 Q. You said in a prior answer that 3PA had been  
8 around for a while. It's just that you hadn't heard of  
9 it.

10 A. Well, I made that statement based on the fact  
11 that it was a pretty complete definition of how it  
12 ought to be done. And that's not typically something  
13 you start with on day one. So therefore, it was -- I  
14 can't tell how mature it was, but it was certainly past  
15 starting, for sure.

16 Q. But your comments that you are going to make to  
17 your salespeople are sort of -- make it sound to me  
18 that because you say ADP seems to be becoming aware of  
19 the laws, that there was something recent.

20 A. It was recent knowledge to me.

21 Q. And what was it about the existence of the 3PA  
22 program that gave you insight into ADP's thinking about  
23 the laws?

24 A. Well, as far as compliance with the law, my  
25 belief is that to do it legally, you got to have

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1 contracts, you got to have definitions, you got to have  
2 an explicit listing of what data fields are going to be  
3 removed from the DMS system. And this is -- the fact  
4 that there was the existence of the 3PA at all was at  
5 variance with what the status quo had been as far as my  
6 knowledge is concerned.

7 And talking to the salespeople, the point I'm  
8 trying to make is that, well, it kind of looks like  
9 that CDK is going to have a formal process, and  
10 therefore, they are not going to be able to throw rocks  
11 at us for having a formal process, which the sales  
12 force are the people that take the stones on this  
13 particular subject. That's why I was telling them that  
14 it looked like the world is perhaps changing.

15 Q. And you talked in this same sentence about  
16 liabilities, that ADP seems to be becoming aware of the  
17 laws and liabilities. What liabilities were you  
18 referencing?

19 A. Well, the very fact that the 3PA agreement  
20 meant to me that they were changing their previous  
21 positions of laissez-faire, and that has -- if you  
22 describe laissez-faire from a business standpoint, it's  
23 treacherous because if there's a breach and you  
24 don't -- you are operating without contracts and  
25 without definitions of who is doing what, it makes for

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1 a really messy situation as far as liability is  
2 concerned.

3 Q. Liabilities like the ones we talked about  
4 yesterday where if a third party sent data into the  
5 wrong hands, the DMS is the deep pocket?

6 A. Exactly.

7 Q. And you state in the next hash mark down, "This  
8 could put the security wars very much behind us." Is  
9 this referencing back to the prior bullet about ADP  
10 becoming aware of the laws and liabilities?

11 A. I would say that would be correct.

12 Q. Let me ask you to take a look at CX 4037.  
13 CX 4037 has Bates REYCID0513201, and it appears to be  
14 an e-mail from Mr. Schaefer to Mr. Brockman. It's  
15 dated September 11, 2014.

16 A. The print on this one is really small. Yes.

17 Q. The exhibit has a paragraph that contains four  
18 numbered paragraphs, the longest of which is number 4,  
19 which starts out "CDK also wants to begin discussing  
20 the tactical direction for the following." And this  
21 is -- these are subjects that are being negotiated  
22 between CDK and Reynolds with regard to what ultimately  
23 becomes a contract that's signed in February of 2015;  
24 is that correct?

25 A. Yes, that's correct.

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1 Q. And the paragraph B starts out "RCI pricing,  
2 minimums, et cetera," and has one little subparagraph  
3 under it. And there's a reference in the -- well, it's  
4 the first sentence, but it's a very long sentence and  
5 there's some dashes, and it's talking about Menu  
6 Advantage [sic], and then the sentence continues, Their  
7 contract is not up with SIS until July 2015.

8 Was this a reference to CDK using SIS to  
9 integrate Menu Advantage on Reynolds' DMSes?

10 A. Yes, that's correct.

11 Q. And was this integration by SIS subject to the  
12 wind down agreement, as far as you know?

13 A. I'm not sure about that. What I think is  
14 happening here is that Phil Batista and SIS, Phil is a  
15 snake, and it looks to me like that CDK has finally  
16 become aware of his true qualities and nature, and they  
17 are deciding they want to move to a place where they  
18 are not doing business with him anymore, which I'm not  
19 surprised.

20 Q. The sentence goes on and -- I know you didn't  
21 write this, but I appreciate your interpreting it for  
22 us. It says that when they go with Reynolds, they'll  
23 be paying Reynolds a much higher price than what SIS is  
24 currently charging them. How much higher price would  
25 CDK pay Reynolds compared to what it was paying SIS?

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1           A. I don't know that. We don't have that  
2 information. They don't tell us that, but they infer  
3 that. But as far as what prices SIS was charging, we  
4 don't know.

5           Q. Well, did you know what price you were paying  
6 Authenticom to integrate apps on to the CDK system?

7           A. I was not personally aware of that, it was such  
8 a minor piece of business. Reminder cards is not  
9 really a huge deal. I think we pay more for the  
10 postcard than the rest of it.

11          Q. Was it generally the case that the third-party  
12 integrators were charging less than what 3PA and RCI  
13 were going to be charging for integration?

14          A. I don't have direct knowledge of that, but I  
15 wouldn't be surprised if that was the case.

16          Q. The next paragraph down, in other words, 4C,  
17 talks about communication plan and marketing  
18 announcement, and the first clause of the sentence  
19 under paragraph i says, "How will the agreement be  
20 announced to the market."

21                 What was the issue with regard to announcing  
22 the agreement to the market?

23          A. CDK was very, very sensitive -- this was their  
24 issue, was very, very sensitive about how all this was  
25 going to happen. We are not, you know, marketing kind

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1 of folks. We are programmers and technical kind of  
2 folks, and this was not something that we brought up.  
3 It was their issue. And at this point we had not given  
4 the slightest thought to that there would even be a  
5 marketing program around an announcement, but that's  
6 their deal. So we were not opposed to that.

7 Q. What would the announcement be if Reynolds  
8 could get its -- what would Reynolds want the public  
9 announcement to say?

10 A. We would not want it to say anything as far as  
11 we are concerned. We would be just as happy if it  
12 didn't exist.

13 Q. Is this something you discussed with  
14 Mr. Schaefer? He's writing you this e-mail that  
15 contains this sentence.

16 A. I would say probably we did, and probably I  
17 would have communicated exactly what I have  
18 communicated to you. We are not spinmeisters.

19 Q. The impression I get from having read documents  
20 in this matter is that Mr. Schaefer thought that a  
21 public announcement was very important to you. Do you  
22 know why we would see that in the documents given what  
23 you have stated about the lack of enthusiasm for a  
24 public announcement that you are testifying about?

25 A. Well, I'm sure I would have talked to Bob

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1 Schaefer about this issue. But again, a joint  
2 marketing announcement with CDK is not something I get  
3 all, you know, wet and tingly about.

4 Q. The notion that there would be an announcement  
5 that CDK was no longer being agnostic about third  
6 parties integrating on its platform would seem to be  
7 beneficial to Reynolds in the sense that it would be  
8 public acknowledgment that they were no longer going to  
9 be throwing rocks at you for your stance on security.

10 A. I would think that that would be the furthest  
11 thing from their mind because they are the ones that  
12 want to do it, which means they are going to want it to  
13 be favorable to them. And anything that's favorable to  
14 them is unfavorable to us. Anything that's favorable  
15 to us would be unfavorable to them.

16 Q. Well, what would be favorable to you in terms  
17 of an announcement?

18 A. Nothing. No announcement. That would be our  
19 preference.

20 Q. You wouldn't want an announcement that CDK was  
21 going to stop coming into your system unauthorized?

22 A. I don't think that there was any way in the  
23 world that CDK would admit that in a marketing  
24 announcement. I mean, it would be like a public  
25 confession that they were hackers and had been hackers

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1 for years. I mean, there's no way in the world they  
2 would have agreed to let that be any part of a press  
3 announcement.

4 Q. I have noticed from reading the final agreement  
5 that it says that both companies will agree on press  
6 releases. Was that something Reynolds wanted the  
7 agreement to say or was that --

8 A. Well, what it is, it's a tit for tat. They  
9 would want it to say that they could agree and approve  
10 it, and we would say, no, it's got to be joint which  
11 means if we didn't like it, it would not happen. It's  
12 one of those kind of situations where you got two  
13 parties and it has to be unanimous consent or nothing  
14 happens.

15 Q. Was that a provision that Reynolds felt  
16 strongly about having in the agreement?

17 A. Certainly I would have thought so. I'm not  
18 aware exactly how it was handled in the final  
19 agreement, but I would hope that our legal department  
20 would be diligent enough to not give CDK a one-sided  
21 ability to approve anything.

22 Q. Is there anything that you could have said to  
23 Mr. Schaefer that would have given him the impression  
24 that you were strongly in favor of a public  
25 announcement about the agreement with CDK?

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1           A. I don't think so, but probably at this point  
2 I'm not far enough along in thinking about how the  
3 whole thing is going to wind down because again, as I  
4 have said before, I was around a lot in the beginning.  
5 There was a pile on my desk in the beginning, but once  
6 it got past the point there wasn't a pile on my desk  
7 anymore, I got other piles to work on. At this point  
8 it's in the later stage of the whole situation.

9           Q. Right, but early on in the process is there  
10 anything you could have said to Mr. Schaefer that would  
11 have given him the impression that Reynolds wanted to  
12 be having a public statement about the agreement with  
13 CDK?

14          A. Well, I think that there's -- Bob Schaefer  
15 feels much more strongly about that than even I do.  
16 And quite possibly we might have had a conversation,  
17 but when it comes down to the final thing, CDK wanted  
18 so much means that automatically it's good for them and  
19 it's not good for us when you really in the cold, clear  
20 light of day and you think about it. But prior to the  
21 cold, clear light of day, it's possible I have had  
22 conversations with -- and we thought that it might have  
23 been a good idea. But when you really think about it,  
24 it's not.

25          Q. Let me ask you to take a look at CX 4273.

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1 CX 4273 has Bates REYCID0675646. It's entitled  
2 Settlement Agreement, and the subtitle is The Reynolds  
3 & Reynolds Company versus Superior Integrated  
4 Solutions, Inc., and then it gives the court that the  
5 settlement is in front of.

6 A. (Reviewing document.)

7 Q. Mr. Brockman, the document, the settlement  
8 agreement that I have shown you at CX 4273 on page 007  
9 of the document, it indicates that it was agreed to on  
10 the 5th day of March 2014. And I guess my question is,  
11 is the settlement agreement the agreement you were  
12 referring to in CX 4036, which was your statement to  
13 the sales executives on July 14, 2014?

14 A. Yes, I believe that's the case.

15 Q. And you had mentioned in a prior answer that  
16 Mr. Batista ran a company called SIS. And just for the  
17 record, SIS is the acronym for Superior Integrated  
18 Solutions, Inc.; is that correct?

19 A. Correct.

20 Q. What exactly was SIS doing with regard to its  
21 interactions with the Reynolds system?

22 A. It was one of the Japanese manufacturers, I  
23 think it was Subaru, had plans for building what I  
24 would call a wrapper around the DMS system so that the  
25 user interfaces would be exactly like Subaru wanted.

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1 It would be Subaru-specific. And what SIS had agreed  
2 to do involved really getting into our system in much  
3 greater detail than anybody else had ever attempted.  
4 And this settlement basically we thought we killed the  
5 snake here. Unfortunately, we've not killed the snake.

6 Next time around Phil Batista got really,  
7 really clever, because he was banned from the RCI  
8 system forever because -- as part of this settlement.  
9 But I mean, he created an absolute fraud. He went out  
10 and had another company created that achieved RCI  
11 status and then he used them to collect all the data as  
12 opposed to him doing it directly in contravention of  
13 what he agreed to here and started selling an interface  
14 for a product called Darwin, which we touched on, I  
15 think, maybe perhaps the first day.

16 And what Darwin is, is a system that competes  
17 in a way against DocuPad. What it does is it handles  
18 presentation of products, aftersale products to the  
19 consumers. And we mentioned the fact that its major  
20 drawback is it can't recompute the payments based upon  
21 what's either bought or decided not to buy as part of  
22 the aftersale process, extended warranties, all that  
23 manner of stuff.

24 And wildly enough, he had gotten some fairly  
25 large Reynolds accounts to buy Darwin. And we were

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1    then our rights -- I mean, he clearly violated  
2    everything in the book, but we couldn't shut him down  
3    because of the nature of the customers that he already  
4    had, which were also our customers. Had to shut the  
5    whole thing down. So we entered into a new stand down  
6    agreement, and I think it's coming up sometime early  
7    next year where he stands down once again. It's a  
8    miserable deal, and I hated to settle with him, but  
9    from a business standpoint, we were just compelled to.

10       Q. You didn't want to settle with him because that  
11    would mean he would get the benefit of the wind down  
12    period; is that correct?

13       A. Yeah.

14       Q. You said from a business standpoint, you had to  
15    settle with him?

16       A. Well, because of the relationships with our --  
17    his customers that's also a big customer of ours.

18       Q. Which customer was it, if you recall?

19       A. I'm sorry, I don't remember, but it was a  
20    significant customer. And I think there was more than  
21    one.

22       Q. Was SIS accessing the Reynolds DMS in a way  
23    that was technologically different than the way, say,  
24    DMI, IntegraLink and Authenticom were accessing the  
25    system?

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1           A. It was different in some respects. I can't  
2 tell you specifically what they were, but Phil is much  
3 smarter than the folks at CDK. And my view of the  
4 situation, I was under the impression that it was a  
5 more sophisticated approach.

6           Q. I have seen in the documents the phrase "code  
7 on the box." Are you familiar with that phrase?

8           A. Very much so. It is very, very unpleasant as  
9 far as we are concerned.

10          Q. Would that be an accurate description of how  
11 SIS was accessing the Reynolds DMS?

12          A. I'm not clear as to exactly from a technical  
13 standpoint how that was done. I would expect Bob  
14 Schaefer to know.

15               MR. COHEN: Mr. Abrahamsen, can we take our  
16 hourly break?

17               MR. ABRAHAMSEN: Yes.

18               (A recess was taken.)

19               BY MR. ABRAHAMSEN:

20          Q. So we were speaking before the break at  
21 CX 4273, which is the settlement agreement with SIS.  
22 Was SIS integrating other third-party apps on to the  
23 Reynolds system? You mentioned the Subaru one, so  
24 referring to others than the Subaru one you mentioned.

25          A. I'm not aware that they were. We had ample

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1 evidence of Subaru. More than enough. So he could  
2 have been doing other ones that we would not know  
3 about. We would have no practical way to understand  
4 what else he might be doing.

5 Q. Let me ask you to take a look at page 003 of  
6 CX 4273, and there's a paragraph, well Roman V, so like  
7 a V. And I was looking at the first sentence of that  
8 long paragraph, and there's a first clause, and then  
9 the sentence continues after the parenthetical "SIS and  
10 Mr. Batista, on behalf of themselves and their  
11 employees and affiliates, covenant and agree not to  
12 integrate with, access or attempt to integrate with or  
13 access any Reynolds-brand DMS."

14 A. Now we think we've got him.

15 Q. So this is a prohibition on Mr. Batista and his  
16 company integrating on the Reynolds DMS?

17 A. Yes.

18 Q. And then the next sentence states, "SIS and  
19 Mr. Batista further covenant and agree not to sell,  
20 transfer or assign to any affiliate or third party any  
21 technology or know-how regarding integration with  
22 Reynolds-brand DMS." And it goes on. What is this  
23 prohibition aimed at?

24 A. The same that him accessing Reynolds DMSes, DMS  
25 systems in any way forever.

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1 Q. And what's the reference to third parties?

2 A. He won't assist third parties with technology  
3 or know-how.

4 Q. And what was the concern about technology and  
5 know-how with regard to third parties that you are  
6 trying to address in this paragraph?

7 A. We believed at that time and still do that Phil  
8 is very smart and he is technologically the most  
9 superior hacker, as far from a technology and knowledge  
10 standpoint, better than DMI and IntegraLink.

11 Q. And what third parties are you trying to  
12 address in this paragraph?

13 A. People that are doing the same thing or similar  
14 things that Phil Batista is doing, which we would like  
15 to think we were aware of all of them, but that's not  
16 necessarily the case.

17 Q. Then further down after there's a reference to  
18 paragraph 3.A.v, and the sentence states that the  
19 covenants set forth are not intended as a covenant not  
20 to compete but rather as a contractual restriction of  
21 access and attempted access intended to protect the  
22 operational and data security -- I'm sorry, yeah, data  
23 security integrity of the DMS. What is that a  
24 reference to?

25 A. I think that that is just stating further again

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1 in a different way that he's not going to access  
2 Reynolds' DMS systems. Whoever wrote this paragraph v  
3 made a very serious effort to contractually lay that  
4 down. And again, we thought we had killed the snake,  
5 but we didn't.

6 Q. When you say "lay that down" in that answer,  
7 you mean lay down the prohibition about Mr. Batista  
8 accessing your DMS?

9 A. That's correct.

10 Q. And the next sentence says, "These covenants  
11 are intended to extend for the life of any Reynolds DMS  
12 product." And that's just what you referenced in an  
13 earlier answer, that you wanted this to extend for as  
14 long as Reynolds was in the DMS business?

15 A. Correct.

16 Q. You mentioned in a prior answer that  
17 Mr. Batista sought access to the Reynolds DMS after  
18 this settlement agreement was reached, which was in  
19 2014. What was the name of the entity that later tried  
20 to get access to the Reynolds DMS?

21 A. I don't remember the name of the entity which  
22 essentially was a straw entity, which is how he got  
23 access. Basically that straw entity did all the  
24 accessing and fed him the data that he needed for the  
25 application that he was building. We know what that

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1 entity is, but I personally don't know the name of it.

2 Q. And is the entity you are referring to, is it  
3 gaining access to the Reynolds DMS through the same  
4 type of technique that SIS was using or is it going in  
5 through RCI?

6 A. It's my understanding that this straw entity  
7 had an RCI agreement and essentially used the power in  
8 that RCI agreement to do what Phil Batista wanted to  
9 get done. And they did it and turned everything over  
10 to him on an ongoing basis the data that was required  
11 for the product that he had built, which is either this  
12 paragraph V is defective and the lawyer missed that  
13 point or there's a case of fraud and deception. I  
14 believe it's a case of fraud and deception.

15 Q. Let me show you three exhibits. These are the  
16 three contracts that were executed between CDK and  
17 Reynolds. We'll go through them one at a time,  
18 obviously, but perhaps for the economy of time, we'll  
19 just put them all on the record now and then I'll ask  
20 my various questions about them as we go forward.

21 MR. COHEN: Then we'll have them all in front  
22 of him, sure.

23 MR. ABRAHAMSEN: And they are CX 4045, which is  
24 the Data Exchange Agreement; CX 4152, which is the 3PA  
25 Agreement; and Exhibit 4153 which is the Reynolds

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1 Interface Agreement.

2 CX 4152 has Bates REYREY0000091. CX 4153 has  
3 REYREY0000025. And CX 4045 has Bates REYREY0000012.

4 BY MR. ABRAHAMSEN:

5 Q. Before we plunge into the actual words in the  
6 contracts, let me ask you a broader question. Just  
7 could you state for the record what your role was with  
8 regard to these contracts.

9 A. Very minimal.

10 Q. Who was responsible for having these contracts  
11 come into being for Reynolds?

12 A. Bob Schaefer.

13 Q. Anyone else?

14 A. I don't know to what extent our legal  
15 department played in actually constructing the  
16 contracts. Again --

17 Q. I meant my question to kind of exclude the  
18 legal department. I'm sorry, I should have made that  
19 more explicit. And I intentionally cut you off.

20 MR. COHEN: Thank you. I was listening and I  
21 was comfortable with Mr. Brockman's response, but I  
22 appreciate your safeguarding the privilege. And the  
23 fact that he consults lawyers for legal contracts is  
24 hardly earth shattering.

25 BY MR. ABRAHAMSEN:

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1 Q. But were there any other businesspeople  
2 involved in negotiating these contracts with CDK other  
3 than Mr. Schaefer?

4 A. Not that I'm aware. Certainly all discussion I  
5 had about the subject was with Bob Schaefer.

6 Q. Let me ask you to take a look at CX 4152 and  
7 ask you to look at CX 4152-016. I believe my questions  
8 will continue on. We'll have the same questions for  
9 the next several pages.

10 In the first part of the document, Section 1:  
11 List of Third Party Access Utilized, and then there's  
12 several entries. Extract Inventory Vehicles - Batch,  
13 what is this part of the contract referring to?

14 A. This would be they keep vehicle inventories in  
15 a separate area inside their database, and the access  
16 would be to -- on a batch basis. And by batch, that's  
17 when you have a program that runs that copies records  
18 from one file into another file, and it does it without  
19 benefit of any screen interaction. That's why it's  
20 called batch.

21 Q. Is this part of the contract starting with  
22 CX 4152-016, are these Reynolds applications that are  
23 going to be integrated into the CDK DMS through 3PA?

24 A. I'm under the impression that these are records  
25 that will come out of 3PA and be used in a marketing

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1 application in our marketing arm.

2 Q. And what is your marketing arm?

3 A. Naked Lime Marketing.

4 Q. So Naked Lime Marketing will get data from CDK  
5 DMSes through 3PA?

6 A. Yes.

7 Q. And could you just go through the next couple  
8 of pages and just tell us what the other applications  
9 are? For instance, number 2 on CX 4152-017 appears to  
10 be Naked Lime Web.

11 A. I'm sorry, I'm not following where I'm supposed  
12 to be.

13 Q. CX 4152-017, there's a numbered paragraph in  
14 the middle of the page, number 2, Application Served.

15 A. Yes.

16 Q. What is Naked Lime Web?

17 A. That's where we have a service which creates  
18 and maintains the website for a dealership, which is a  
19 very important part of their marketing.

20 Q. And that would now be getting data through 3PA;  
21 is that correct?

22 A. Yeah. Vehicle inventory data, that's correct.

23 Q. And flipping over to CX 4152-018, number 3 is  
24 toward the top of the page and it's talking about  
25 ReminderTRAX. What is that?

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1           A. That is the service that prepares service  
2 reminder cards to be sent out to the consumers  
3 encouraging them to bring their vehicles in for  
4 50,000-mile service or winterizing or de-winterizing,  
5 that sort of thing.

6           Q. And after the contract is signed, ReminderTRAX  
7 would be getting data from CDK DMSes through 3PA; is  
8 that correct?

9           A. That's correct.

10          Q. Let me ask you to flip to the first page of the  
11 Exhibit CX 4152-001, and under Background in the second  
12 paragraph it says, Vendor provides its application  
13 programs" and then there's a parenthetical "as further  
14 described in section is 2 of Exhibit 3PA-B, including  
15 all subparts, the applications, close quote, to certain  
16 CDK clients. So those are the Reynolds applications we  
17 were starting to look at a couple of questions ago; is  
18 that correct?

19          A. That's correct.

20          Q. Let me ask you to look at CX 4152-004, and  
21 actually it's paragraph E on that page. And I'm going  
22 to ask you whether this paragraph prohibits Reynolds  
23 from using hostile integrators for its applications.  
24 And I draw your attention to the first -- well, there's  
25 a sentence ten lines down in subparagraph E --

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1 MR. COHEN: I'm sorry, Dana, my assistant is  
2 bringing me something.

3 (Discussion off the record.)

4 BY MR. ABRAHAMSEN:

5 Q. I'm sorry, Mr. Brockman, I'm having difficulty  
6 asking you to turn your attention to the sentence I  
7 want to ask you about. It's ten lines down in  
8 subparagraph E, and it begins, "Vendor agrees that it  
9 will not".

10 A. I'm sorry, I'm just not finding that. I'm  
11 quite sure it's probably here, but this paragraph is a  
12 killer.

13 Q. I'm sorry.

14 A. Typically what I do when I'm faced with having  
15 to understand something like this is I get a copy in  
16 Word and I go back through and wherever I think I need  
17 new paragraph ought to start, I hit a return, and I end  
18 up with something that's about this long, but you can  
19 read it.

20 Q. It's ten lines down in subparagraph E.

21 A. Okay.

22 Q. And I'm not going to read -- it's a long  
23 paragraph and this is a long sentence. I'll ask you to  
24 read that sentence and then answer my question, which  
25 is whether this sentence is stating that Reynolds

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1 agrees not to use hostile integrators to get onto the  
2 CDK system.

3 A. Yes, I see and understand that provision.

4 Q. Is my statement correct that that provision  
5 prohibits Reynolds from hostilely integrating onto the  
6 CDK system?

7 A. Yes, that's correct.

8 Q. Let me ask you to take a look at the second  
9 exhibit in our series of three exhibits. It's CX 4153.  
10 This is the Reynolds Interface Agreement. I'm going to  
11 direct your attention to two provisions starting with  
12 definition 1.8 on CX 4153-002, Non-Approved Access. Do  
13 you see that definition?

14 A. Yes.

15 Q. And is that definition a provision that is  
16 relevant to CDK getting direct or indirect access onto  
17 the Reynolds system for applications?

18 A. (Reviewing document.)

19 Q. Mr. Brockman, let me ask you to take a look at  
20 CX 4153-006. The very first provision on that page is  
21 paragraph 2.5.3, Compliance With Certification.

22 A. I'm sorry, I'm a little bit lost. Could you  
23 repeat the directions again.

24 Q. No problem. CX 4153-006, at the very top of  
25 that page, the first provision, 2.5.3.

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1 A. Okay, I have got 2.5.3.

2 Q. Compliance With Certification.

3 A. Yes, I see that.

4 Q. Okay. I'm looking at the second clause of the  
5 first sentence, "CDK acknowledges that any non-approved  
6 access and/or non-approved use is strictly prohibited  
7 and is considered a material breach of this RCI  
8 agreement." Is this a prohibition on CDK using hostile  
9 integration to get onto the Reynolds system?

10 A. That's correct. It's an anti-hacking  
11 provision.

12 Q. Let me ask you to turn to our third agreement,  
13 CX 4045, the Data Exchange Agreement. I'm going to ask  
14 you -- you can take a look at any part of the agreement  
15 you care to. I'm going to ask you questions about  
16 paragraph 4.5, which begins on the very bottom of  
17 CX 4045-004.

18 A. Okay. I'm on the page 4 of 13.

19 Q. Yes.

20 A. Okay.

21 Q. It's paragraph 4.5. It begins at the very  
22 bottom of that page, Prohibition on Knowledge Transfer  
23 and DMS Access.

24 A. Yes, I see and understand that.

25 Q. What is this paragraph intended to apply to?

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1           A. What it is, it is an anti-hacking provision.  
2   And it's pointed not at CDK, but at anybody that CDK  
3   might help or share information with. That's my  
4   understanding.

5           Q. So when you say it's anti-hacking, what is  
6   the -- what was the fear that was being covered by this  
7   paragraph?

8           A. Well, what's happening in general with all  
9   these agreements is that Reynolds and CDK have agreed  
10   to provide RCI interfaces to each other under standard  
11   terms and conditions. And what this specific provision  
12   is all about is that not only do we agree not to hack  
13   each other, to only use authorized interfaces, but to  
14   not help or assist or teach anybody else how to hack  
15   into CDK's systems or Reynolds' systems. That's the  
16   whole thrust.

17          Q. So at this point does this paragraph, since it  
18   applies to CDK and Reynolds, is this an indication to  
19   you that CDK has moved away from its laissez-faire  
20   attitude and is now concerned about hackers getting  
21   into their system?

22          A. I hadn't thought about it in that light, but  
23   yeah, I believe that you could see it that way.

24          Q. Let me ask you to look at paragraph  
25   CX 4045-003, and I'm looking at paragraph 4.2,

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1 Third-Party Communications. And my only purpose in  
2 showing you this paragraph -- let me let you read the  
3 paragraph. Then I'll propound my question.

4 A. 4.2 is the one being referred to?

5 Q. Yes.

6 A. Yes.

7 Q. We had spoken earlier about a provision that  
8 the parties entered into where they would each have to  
9 seek approval and gain approval from the other firm in  
10 order to issue press releases. And I just thought I  
11 would show this to you, since we hadn't had the  
12 document in front of us at the time we were talking  
13 about, and ask you whether this is the provision that  
14 you understood me to be asking about when I asked you  
15 about whether the agreement contained such a provision.

16 A. I'm afraid I'm a little lost. Could you  
17 reiterate?

18 Q. Could you look at 4.2, the last sentence. It's  
19 a sentence that runs onto the next page, and it begins  
20 three lines up from the bottom of the page. And it  
21 begins, "Prior to the dissemination of any written  
22 press releases or market communications by either  
23 party". And I'm going to skip over to the end of the  
24 provision on the very top of 4045-004, "such press  
25 releases or market communications shall be tendered to

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1 the other party for its review and approval."

2 A. Yes, I see that.

3 Q. Are you familiar with it?

4 A. Frankly, not. These documents, I was not  
5 involved at all in their preparation. I authorized  
6 them to be done so that the project could be finished  
7 and that we could get CDK to stop hacking into our  
8 systems. But as far as the content and the details  
9 inside these contracts, I was not personally familiar  
10 with -- I was not involved at all in the drafting, and  
11 therefore, I can't claim or disclaim knowledge about  
12 any particular piece. They got the job done. The  
13 mission was accomplished. And I look back on it as a  
14 successful effort.

15 Q. You know, just sitting back and not, you know,  
16 staring at this document, did you have an  
17 understanding -- this was signed in February of 2018.  
18 So did you have an understanding in the February of  
19 2015 time period that you had an agreement with CDK  
20 whereby you would both have to review, say, a press  
21 release before you put it out talking about the  
22 agreements that you had entered into?

23 A. Frankly, I was not thinking very much about  
24 that at all. I had moved on mentally from this project  
25 at the time these documents were drafted.

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1 Q. Were there any press releases that Reynolds  
2 sent out about these agreements?

3 A. I'm sorry, I don't have any knowledge in that  
4 regard. We may or may not have. I don't know.

5 Q. And the same question for CDK. Did CDK send  
6 out any press releases about the agreements?

7 A. I'm sorry, I don't know.

8 Q. Did you come to have an understanding during  
9 the time period leading up to these agreements whether  
10 CDK had a message that they wanted to communicate to  
11 the market about these agreements?

12 A. I'm sorry, I have no perception of even  
13 thinking about that. I was on to the next project.

14 Q. Did you ever become aware of any exchanges of  
15 documents between Reynolds and CDK exploring whether to  
16 send communications to the Reynolds sales force?

17 A. I'm sorry, I'm not aware of any such thing.  
18 Again, I was not active in this process. I had already  
19 moved on.

20 (A recess was taken.)

21 BY MR. ABRAHAMSEN:

22 Q. I would like to show -- Mr. Brockman, I would  
23 like to show you what we've marked as CX 4176 and ask  
24 you to take a look at it. It's a new exhibit. CX 4176  
25 has Bates REYCID0046837. I would ask you to take a

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1 look at it. CX 4176 is an e-mail from Mr. Thornhill to  
2 Mr. Schaefer and Mr. Martin dated February 26, 2015.  
3 It's an e-mail with an attachment.

4 A. Yes.

5 Q. CX 4176 is entitled -- well, the subject matter  
6 of the cover e-mail, I should say, is Revised  
7 One-Pager - CDK. Were you familiar with the drafting  
8 of this document?

9 A. Not at all.

10 Q. Have you seen this document before?

11 A. Frankly, not. I don't believe I have.

12 Q. Putting aside the actual physical document  
13 itself, were you aware of any undertakings at Reynolds  
14 to draft up a document to -- so people could  
15 communicate to various audiences what the CDK/Reynolds  
16 agreement contained?

17 A. I don't believe that I was. Again, this is now  
18 substantially after the whole project got done  
19 contractually, and I'm even further away from what's  
20 happening in this area. All I know is that the general  
21 reports are, yep, it's working; yep, CDK is doing what  
22 they promised they would do. And therefore, not a  
23 problem. I'm on to the next subject.

24 Q. I appreciate that, and I'm just going to use  
25 the document sort of as a way to ask you questions, but

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1 I'm appreciative of the fact that you haven't seen it.  
2 You are not familiar with it. And I understand your  
3 explanation and I will try not to belabor this line of  
4 questioning, but I would like to ask you a couple  
5 questions based on the document even though you are not  
6 familiar with it.

7 A. Sure.

8 Q. I would ask you to turn to CX 4176-004. And  
9 the first box on the page has in the far right-hand  
10 column Scenario: Media outlets find out about the  
11 CDK/Reynolds agreement.

12 A. Yes.

13 Q. To your knowledge, were the agreements ever the  
14 subject of a media inquiry?

15 A. I don't recall specifically other than I think  
16 that there was something. But exactly how big it was  
17 and what all it contained, I don't remember if I ever  
18 saw it.

19 Q. Were you asked to give a statement to the  
20 media?

21 A. No.

22 Q. The response as indicated in this same box is  
23 that ensure CDK and Reynolds market message align. Do  
24 you know what that's a reference to?

25 A. Other than what it says in that sentence, no.

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1 It says what it says. I agree that what it says was  
2 appropriate, but I had no more specific knowledge about  
3 it.

4 Q. Did you ever have any communications in this  
5 February 2015 time period with anyone at CDK about  
6 aligning the market messaging?

7 A. I don't believe so.

8 Q. Did you have any discussions with anyone at  
9 Reynolds about ensuring that the CDK and Reynolds  
10 market message aligned?

11 A. No, not that I recall. And I'm sorry, but  
12 February 15th was -- February three years ago or four  
13 years ago was a hundred years ago as far as I'm  
14 concerned.

15 Q. The next bullet down says, "Access to DMS by  
16 dealers' DMS provider only." Do you know what that's a  
17 reference to?

18 A. Okay, this is the second block down?

19 Q. The first block, second bullet down under  
20 Response.

21 A. Okay. Yes, I see that.

22 Q. Is that a reference to the Reynolds position  
23 that only people who have an RCI agreement are allowed  
24 to access the Reynolds DMS?

25 A. That's correct. That's in line with our

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1 long-standing policy.

2 Q. Was it your understanding that the position at  
3 Reynolds was that if the media were to contact you,  
4 that they would ensure that CDK and Reynolds were  
5 aligned on that market message?

6 A. Again, I'm not clear exactly who was doing what  
7 here. I don't disagree with what was being done, but  
8 it was, as far as I was concerned, it was  
9 administration-type kind of issues about a project that  
10 had already been done.

11 Q. This document is dated February 26, 2015. My  
12 understanding is that the contracts were signed on  
13 February 18, 2015. So this document is eight days  
14 after the contracts were signed. But I wanted to ask  
15 you, you said that you had kind of finished with this  
16 project earlier. Give me your best estimation of how  
17 much earlier before this February 2015 time period  
18 where you would consider yourself engaged in the  
19 negotiation of these contracts.

20 A. Unfortunately, I don't have a timeline of what  
21 happened when, but I believe that I was detaching as  
22 the final agreements were being drafted because the  
23 reports I got back from principally Bob Schaefer was  
24 all was in order, things were proceeding according to  
25 our expectations and that my input was not necessary

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1 anymore.

2 Q. We looked earlier today at an e-mail exchange  
3 you had with Mr. Anenen which was sort of, I believe,  
4 in late June, early July of 2014. So with that as a  
5 milepost and February of 2015 when the agreements were  
6 signed, can you give me any idea of where in that time  
7 period you became less engaged in the actual  
8 negotiations of the contracts?

9 A. I would say probably -- I would have periodic,  
10 not scheduled discussions with Bob Schaefer about  
11 what's going on. And one of my questions would be were  
12 the contract negotiations reaching final stages. So it  
13 would be whenever that was happening date-wise. That  
14 would be when I was beginning to detach and move on to  
15 the next project.

16 Q. In terms of details about drafting the  
17 contracts, what issues were you engaged on in that time  
18 period after the July -- e-mails in July and the  
19 signing of the contract? Were there issues that came  
20 to your attention that needed to be resolved?

21 A. Not that I recall.

22 Q. Where is your office located?

23 A. I live at home.

24 Q. I live at home too.

25 A. To describe how my life works is I get up in

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1 the morning and I have a big blue bathrobe, terrycloth.  
2 I take the dog out for a walk. I get a cup of coffee  
3 and some toast, I sit at my desk and the day commences.  
4 Much to my wife's unhappiness, many times noontime  
5 comes and I'm still in the terrycloth bathrobe.

6 Q. You'll be surprised to learn that was not  
7 exactly the information I was driving at, but I  
8 appreciate your answer. My next question was going to  
9 be whether you worked in physical proximity with  
10 Mr. Schaefer. That was the question I was going to get  
11 to.

12 A. He is in Dayton, Ohio. I'm in Houston. We  
13 communicate typically by Skype when necessary. But he  
14 is a very experienced person, been around a long time,  
15 knows the waterfront, if you will. So I don't have  
16 extensive communications with him. From an  
17 organizational standpoint, I have 16 direct reports,  
18 which is not right, but it is.

19 Q. Is Mr. Schaefer a direct report?

20 A. Yes.

21 Q. So we obviously know from reading the documents  
22 that you do use e-mail to communicate with Mr. Schaefer  
23 and many other people. And you said you use Skype.  
24 Any other forms of communication with Mr. Schaefer?

25 A. Occasionally there will be a telephone call

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1 when he's not in a place where he can access Skype.

2 Q. So during this time period when the contracts  
3 were being negotiated and so on, give me an estimate of  
4 how frequently you are in contact with Mr. Schaefer  
5 with regard to these contracts. And I'm sure it  
6 varied, but just give me an estimate.

7 A. Probably at that stage I would have been in  
8 contact with him once a week, once every ten days, two  
9 weeks.

10 Q. Let me ask you to refer back to the exhibit in  
11 front of you, CX 4176, and ask you to take a look at  
12 the first box on the top of CX 4176-005.

13 A. This is the top box?

14 Q. Yes, sir.

15 A. Yes.

16 Q. My first question is under Scenario, it says,  
17 "New third-party vendor contacts CDK." How are  
18 third-party vendors dealt with in the contracts we  
19 looked at earlier?

20 A. Again, this was the orderly stand down period,  
21 and as I recall, they got an announcement from CDK or  
22 actually from DMI that they were no longer going to be  
23 offering their Reynolds and Reynolds hacking services  
24 and that they directed them on to us to talk about what  
25 they needed to have done.

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1           And I think it's important to point out that in  
2 many or most cases, batch-type kind of data can be  
3 handled by the dealer. They can run reports. They can  
4 point those reports out to a PC and they can transmit  
5 them into their third party, and they get all the data  
6 and it works just fine. The issue is that somebody has  
7 got to remember to do it every day. It's not one of  
8 these things where you can just kind of set your watch  
9 and everything is going to happen hands-off.

10           And I would think some fair number of third  
11 parties were really pretty small and they really could  
12 get at what they wanted as far as getting dealership  
13 data by having to dealer send it to them.

14           Q. Right. My understanding is that for existing  
15 DMI clients, they would have the choice -- once the  
16 contracts were signed, they would have the choice of  
17 either going into the RCI program if they wanted to  
18 continue to get automated, the data in an automated  
19 fashion. Or if they did not want to go to RCI, they  
20 could manually send the data. Is my understanding  
21 accurate?

22           A. That's correct.

23           Q. And my understanding is that some chose to go  
24 into RCI and others chose not to go into RCI. Is that  
25 your understanding?

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1           A. That is correct.

2           Q. Do you have any idea magnitude-wise how many  
3 chose to go into RCI rather than not go into RCI?

4           A. I don't have good information on that, but I do  
5 know that it was some number. It was not just one or  
6 two.

7           Q. I'm sorry, some number that did what?

8           A. Some number that actually elected to start  
9 having their dealership customers print reports and  
10 transmit them to the third party as opposed to being on  
11 RCI.

12          Q. CX 4176-005 talks about a scenario where  
13 there's a new third-party vendor that contacts CDK. I  
14 interpreted that as a new third-party vendor being a  
15 vendor that hadn't already been subject -- had not  
16 already been using DMI to integrate onto the Reynolds  
17 system. Do you know whether the -- how the contracts  
18 dealt with the situation where a brand new vendor would  
19 go to CDK and ask for them to use their services?

20          A. I don't know how the contracts addressed that  
21 or if they addressed that, but I think what's stated  
22 here is what actually happened in that if some new  
23 third party shows up and wants to access data in  
24 Reynolds' DMS systems, what happened here was that if  
25 they talked to CDK, CDK forwarded them on over to us.

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1 Q. What was your interpretation of the reference  
2 in the fourth bullet which says "CDK and Reynolds agree  
3 on the benefits of the dealers' DMS vendor providing  
4 data"?

5 A. Well, I think it is what it says it is, that  
6 there are obvious advantages, one of which is that  
7 using an automated fashion that all the data that's  
8 supposed to be collected gets collected. Again, the  
9 key to the dealership actually printing reports and  
10 transmitting them to the third party, it requires  
11 somebody that is diligent and will do it every day like  
12 they are supposed to or every week or every month. And  
13 one of the benefits of an RCI-type contract is that  
14 personnel failure is removed from the equation.

15 Q. The third bullet down talks about DMI  
16 continuing to provide data cleansing, standardization  
17 and aggregation services. Is that a reference to DMI  
18 providing a subset of services that do not include  
19 actually entering into the DMS, what you have referred  
20 to as hacking?

21 A. Yes, that's my understanding. And what they do  
22 in those services I'm not aware of. That's not a  
23 business that we pursued and therefore have had no  
24 occasion to come to understand what's included. I  
25 think probably one of the obvious ones is a process

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1 they call de-duplication. You end up with duplicate  
2 pieces of data. And they have to have some software, I  
3 think in some cases probably fairly sophisticated  
4 software, that detect the presence of dupes and  
5 actually have confidence enough where they can actually  
6 combine them where all that happens automatically.

7 Q. And does the third bullet saying that DMI will  
8 continue to provide those services read in conjunction  
9 with the fourth bullet that CDK and Reynolds agree on  
10 the benefits of the dealers' DMS vendor providing data,  
11 the recitation of the fact that CDK will be moving away  
12 from its laissez-faire approach to third-party  
13 integration on its DMS?

14 A. I'm afraid I'm missing the point.

15 MR. ABRAHAMSEN: Why don't you re-read the  
16 question, and then I'll probably end up rephrasing it.

17 (The record was read as requested.)

18 THE WITNESS: Sitting here reading it today  
19 after the fact, I agree that it could be understood  
20 that way. However, this particular document, I didn't  
21 draft it. So I'm unfamiliar with it. I haven't seen  
22 it. I have seen it for the first time today.

23 BY MR. ABRAHAMSEN:

24 Q. And I appreciate you hanging with me through  
25 these questions and letting me use that as a crutch to

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1 ask you questions. Let me ask you to take a look at  
2 CX 4182. CX 4182 bears Bates REYCID0675485.  
3 Mr. Brockman, have you seen the document before?

4 A. I don't recall seeing this document ever  
5 before.

6 Q. It's entitled CDK Deal Information -  
7 February 2015.

8 I would like you to turn to the third page of  
9 the exhibit, which is CX 4182-003, and ask you to take  
10 a look at the paragraphs -- there's two numbered  
11 paragraphs under the heading that's underlined Key  
12 Messages.

13 A. Yes, I see those.

14 Q. Then the first key message, I think we've  
15 talked about the first sentence, "Reynolds has long led  
16 the way in the battle on DMS security." When you talk  
17 about DMS security, aside from keeping third party,  
18 what you refer to as, hackers off the system, what  
19 other security measures would you say Reynolds has led  
20 the way on?

21 A. Well, there's, for example, establishment of  
22 user ID records inside the DMS system. One of the  
23 things that we did that I have not heard anybody else  
24 do it, since we also in most cases have the payroll  
25 information, what we do is we look at the user ID, and

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1 before we declare it a valid employee, we go check the  
2 payroll file, which is kind of simple but you know,  
3 certainly a reasonable thing to do from a security  
4 standpoint. And again, nobody else has done that that  
5 we know of.

6 Q. Would that help detect whether there is a  
7 third-party integrator getting a user ID and password  
8 from the DMS?

9 A. It would certainly detect them being provided a  
10 user ID and password. There is -- I believe that  
11 software also double checks that there is not two  
12 people connected to a single user ID. And again, the  
13 name and user ID has to be a name in the payroll file.

14 Q. So if somebody like Mr. Batista was given a  
15 user ID and a password by a dealer to run an app on  
16 their dealership's DMS, you would use that -- that  
17 software would allow you to detect that Brown Chevrolet  
18 does not have a Phil Batista as an employee? Is that  
19 how it works?

20 A. Exactly.

21 Q. Let me ask you to look at -- and I appreciate  
22 I'm just using this document as a crutch to ask my  
23 questions because I know you haven't seen it and you  
24 didn't write it. CX 4182-003 Key Messages sentence  
25 numbered paragraph 1, second sentence, and I'll read

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1 it: "In doing so, other DMS providers are finally  
2 acknowledging that the fastest and correct way to move  
3 data between parties is to have the DMS push the data."  
4 Is the phrase "have the DMS push the data" a reference  
5 to what RCI does?

6 A. Yes. RCI is typically, and it could be in all  
7 cases, set up to actually wake up and perform program  
8 instructions about what data to get, where to send it  
9 to, from which dealership. And I think in some cases  
10 even the hour of the day is specified in the RCI  
11 program.

12 Q. The first clause in this sentence says "In  
13 doing so, other DMS providers are finally  
14 acknowledging". What is the reference in your  
15 interpretation of the other DMS providers?

16 A. Other than what it says, other DMS providers.

17 Q. In this February 2015 time period, obviously  
18 you had -- we have been talking about CDK and its  
19 position on data security. Were you aware of any DMS  
20 provider other than CDK, perhaps, that was  
21 acknowledging that the safest way to move data is to  
22 have the DMS push the data?

23 A. That would be the only one that I would be  
24 aware of. Quite likely, some of the more minor DMS  
25 providers had also adopted it, but I'm not aware of

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1     that.

2           Q.   And the second numbered paragraph, the first  
3     sentence states, "CDK is finally acknowledging that  
4     they need to move forward with securing their DMS."  
5     And "securing their DMS" is underlined.  What is your  
6     interpretation of that?

7           A.   That's our belief, that what they are doing is  
8     that they are migrating to what we have been doing all  
9     along.

10          Q.   What you had been doing all along with regard  
11     to securing your DMS?

12          A.   Yes.

13          Q.   And would that include adopting a position  
14     where they would not permit third-party integrators to  
15     get onto their DMS?

16          A.   Yes.

17          Q.   The next paragraph down is entitled Important  
18     to Note.  It's underlined.  I would ask you to read the  
19     paragraph and then I'll ask my questions.

20          A.   Yes.

21          Q.   Let me give you my interpretation of what the  
22     paragraph is saying and then you correct me if I have  
23     misinterpreted it.  It seems like now that the  
24     contracts have been signed, CDK is going to provide  
25     Reynolds with the identification of its clients that

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1 its integrating onto the Reynolds system. And  
2 following that, once Reynolds receives those and is  
3 able to protect those, Reynolds is going to put out its  
4 security update, a new security update; is that  
5 correct?

6 A. Yes.

7 Q. And the second-to-last sentence ends with the  
8 clause "meaning a number of users will be broken."  
9 What is your interpretation of that?

10 A. Well, this goes back to the peaceful stand down  
11 process. Prior to that we had notified CDK that we had  
12 a number of security changes that we had been holding  
13 off releasing, but if they didn't finally agree to get  
14 out of our boxes, quit hacking us, we were going to  
15 turn loose those security changes which were going to  
16 make basically all of CDK inoperative as far as  
17 extracting data out of Reynolds' machines.

18 Well, once the contract was done, the agreement  
19 in the stand down was that it would be an orderly stand  
20 down and there would be no stand downs that would cause  
21 trouble, unhappiness on the part of dealers. Well, in  
22 order to do that, we have to know who because we don't  
23 know who all the ADP customers are. We don't know who  
24 all their third parties are. So what we are talking  
25 about here is that if we don't get the names, then

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1 what's going to happen is as we finally turn loose this  
2 next security update, there's going to be some people  
3 that won't work.

4 And the fact that this even has to be said is  
5 kind of amazing because it is so clear that if you are  
6 not on the list, if we don't know that you are a CDK  
7 customer, certainly they will get the full force of the  
8 security changes that are impending.

9 Q. And then there's a reference in the next  
10 sentence that we will know immediately whether these  
11 parties are supposed to be broken or not. And I  
12 interpret that to mean that you don't intend to disrupt  
13 the CDK clients but that if somebody is using an  
14 integrator that you are not protecting, they are  
15 supposed to be blocked. Am I interpreting it  
16 correctly?

17 A. Absolutely correct.

18 Q. So --

19 A. And we have no knowledge as to how many, who,  
20 because an exploit that gets past or attempts to get  
21 past a security change, there's no way for us to know  
22 until we apply a security change and then somebody  
23 hollers. That's when we know that there's somebody new  
24 that we didn't know about before. And hopefully at  
25 this point there should not have been very much of

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1     that, but we don't know.

2           Q.   Well, so what happened?  At this point, as I  
3     understand it, you have -- you are protecting some SIS  
4     customers under their stand down, and you are  
5     protecting the CDK customers under their stand down,  
6     and then you put in the security change, as I  
7     understand it.  And so what happened?  Were there  
8     people who were disrupted?

9           A.   The answer to that is I don't know of any.  I  
10    just don't know whether there were, whether there were  
11    not.  I do know that there was -- I don't recall any  
12    serious commotions.  Whatever it was, I don't think  
13    there were very many.

14          Q.   So did there come to your attention any angry  
15    phone calls or letters or other forms of communication  
16    from people that were being disrupted as a result of  
17    your security enhancements after this March of 2015  
18    time period?

19          A.   Not that I'm aware.  Of course, since then  
20    what's happened has been relatively quiet.  Not  
21    completely, but relatively.  Nothing major.  But as  
22    security changes go on, continue to get improved, I'm  
23    sure that we'll find more.  Where there is one hacker  
24    there, there are ten more behind them.

25          Q.   Just so the record is clear, I followed your

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1 answer to the question. The question was very broad,  
2 so I'm going to break it down into two questions as  
3 between app providers and OEMs just so the record is  
4 clear about this.

5 Following this March 2015 time period, were you  
6 contacted by any OEMs because they had had applications  
7 that they wanted to use that were disrupted?

8 A. Personally, I received no such contact.  
9 Whether or not someone else in the organization did,  
10 I'm not aware. But I'm quite sure that I did not.

11 Q. And with regard to app providers in this time  
12 period following March of 2015, were you contacted by  
13 any app providers with regard to anger over disruption  
14 of their apps?

15 A. Not me personally.

16 Q. You mentioned in an earlier answer that, I  
17 forget the exact phrase you used, but you noted that  
18 CDK had had a number of CEOs or words to that effect.  
19 We have been speaking today and yesterday about  
20 Mr. Anenen. Who are the other CEOs of CDK in addition  
21 to Mr. Anenen that you are aware of?

22 A. Mr. Anenen was the last true CEO because he is  
23 like a 37-year veteran of the business and probably the  
24 longest serving veteran CEO. And probably I'm the only  
25 one that has got more than he. I have got 49 years.

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1 But I can't recite the names to you. The most  
2 recent was a gentleman that was president of Intel.  
3 And he was dismissed from Intel for an inappropriate  
4 relationship. And his new job is CEO of CDK.

5 And there were two others besides him prior.  
6 And this is caused by the fact that CDK is controlled  
7 by a group of hedge funds. Hedge funds, it's my  
8 understanding that they hold like 60 percent of the  
9 stock of CDK. And they are very impatient for  
10 improvement in operations and the profits to be -- to  
11 come about inside CDK. So therefore, they appear to be  
12 very quick on the trigger to turn over CEOs in seeking,  
13 you know, improved stock valuations so they can  
14 ultimately sell the stock that they hold today and make  
15 a profit and get on to the next deal. I'm sure it's  
16 been disappointing to the hedge fund folks that it has  
17 not already been able to occur.

18 And this is all a matter of public record and  
19 probably is the only part of CDK that I pay attention  
20 to. I'm always curious as to who my counterpart is.

21 Q. So we went through some -- we talked about some  
22 conversations you had with Mr. Anenen. Telephone  
23 conversations, I believe. Did you also meet with him  
24 at NADA?

25 A. Briefly. NADA is, you shake hands with old

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1 friends and old enemies, but there's no serious  
2 conversation that takes place. There's too much else  
3 going on.

4 Q. So you had serious conversations with  
5 Mr. Anenen over the phone, the ones we spoke about?

6 A. Yes.

7 Q. And did you have any conversations with  
8 Mr. Anenen after the contracts were signed that we  
9 looked at?

10 A. No. As a matter of fact, the only interaction  
11 I have had with him is at the big national auto dealers  
12 association convention. He was no longer with CDK, and  
13 he stopped past just to say hello. He's a nice guy.

14 Q. To what extent have you had conversations with  
15 the CEOs at CDK who have followed Mr. Anenen?

16 A. None.

17 Q. You have never spoken with them on the phone?

18 A. No. I don't exist as far as they are  
19 concerned. Yes. And I have not -- I got other things  
20 better to do than to seek out a conversation with them.

21 Q. And just to make sure the record is clear on  
22 this, have you had occasion to meet with them  
23 informally at an industry conference?

24 A. As far as I know, the answer is no. However,  
25 what happens is that at NADA people kind of travel in

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1 packs of two, three, four, five, six, seven, eight, ten  
2 people. And they come by and I would not recognize  
3 them by face. And they don't announce themselves.  
4 They don't have a sign on them that says I'm CEO of  
5 CDK. So I may possibly have seen some but not  
6 understood who they were.

7 (A recess was taken.)

8 BY MR. ABRAHAMSEN:

9 Q. Mr. Brockman, we were talking yesterday, I  
10 believe it was, about how the OEMs need to certify a  
11 DMS provider in order for the DMS provider to have  
12 their franchise dealers as using the DMS. Do you  
13 recall that?

14 A. Yes.

15 Q. And we talked about decertification as  
16 something that would be very, very bad for the DMS  
17 provider if an OEM were to do that.

18 A. Disastrous.

19 Q. Short of decertification, is there other things  
20 that OEMs can do to the DMS to sort of influence how a  
21 DMS undertakes certain policies?

22 A. Yes. Probably one of the ones that we see the  
23 most often is -- and we'll say that Ford Motor Company  
24 has a new initiative regarding a service and how that's  
25 handled from a computer standpoint. And what they do

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1 is, they kind of separate it into multiple pieces. And  
2 there will be mostly old pieces but then some new  
3 pieces. And let's say that the new piece is a new  
4 interface where a dealership that uses the right DMS  
5 with the right certifications, they can type in a  
6 vehicle identification number and get an instant  
7 readback of all the warranty claims that's been made on  
8 that vehicle so that you can see if, say, for instance  
9 another dealership fixed something under warranty, but  
10 they really didn't fix it. So you have the right to  
11 kick over to them and say, look, you guys fix it.

12 Well, if you are not on the good guy list as a  
13 DMS provider, you may not get access to this special  
14 new facility that Ford is making available, which is  
15 very, very worthwhile and important to dealership  
16 customers. So therefore, you are in the  
17 never-neverland where you are not decertified, but  
18 again you are not quite fully certified either. And  
19 larger dealerships will be very, very sensitive to  
20 this, which is we have a lot of customers in that  
21 category.

22 And so it even comes down to dates of approval.  
23 If we don't meet their schedule, their desired schedule  
24 as far as the creation of the additional facilities  
25 inside the factory communications, they'll say, okay,

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1 you are late but we are still going to certify you, but  
2 we are not going to give you that until next March.

3 That's dirty pool, but they are the guys. And  
4 we end up having to work programmers nights and  
5 weekends to meet their crazy schedule as far as when  
6 something is supposed to be built, tested, implemented  
7 in the field by their by-god date.

8 Q. And I'm curious, you have mentioned several  
9 times in the last two days that you contemplated  
10 throwing the switch on CDK and blocking their apps,  
11 shutting them down. Was there any concern that if,  
12 say, you shut down CDK because you didn't have an  
13 agreement with them and caused disruption to a lot of  
14 dealers' use of CDK, the products that CDK was  
15 integrating onto their DMSes, was there any fear that  
16 OEMs would be angered by this also, the dealers would  
17 complain to the OEMs and that the OEMs would take  
18 actions adverse to Reynolds because of the blockage  
19 that had taken place?

20 A. That's always a possibility. But the hopes are  
21 in any kind of situation such as we went through CDK  
22 that cooler heads would prevail and a reasonable  
23 situation would occur as opposed to a disastrous one.  
24 And historically, that's always been the case. Now,  
25 you can't say that's going to be that way on every

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1 situation forever, but that's the opening expectation.

2 Q. And in this particular instance, you did reach  
3 an agreement with CDK, and the anger that would have  
4 been directed to the OEMs was avoided, presumably?

5 A. Correct.

6 Q. Let me ask you to take a look at an Exhibit  
7 CX 4038. CX 4038 has Bates REYCID0577749. It's an  
8 e-mail with three pages of attachments. The subject  
9 line is 6240's.

10 A. Well, I conclude that we've got a senior vice  
11 president of sales that writes pretty good.

12 Q. What do you conclude that based on?

13 A. Well, short paragraphs, to begin with.

14 Q. You said vice president of sales, and you are  
15 referring to Keith Hill; is that correct?

16 A. Yes, that's correct.

17 Q. Have you seen this document before?

18 A. No, I have not.

19 Q. With your indulgence, I'm going to still use as  
20 an effort to ask you to interpret certain things in it.  
21 In his cover e-mail, he talks about some of the  
22 subjects we have been talking about in the last two  
23 days, data security, and he uses the phrase in the  
24 sentence "unattended automated access."

25 A. Yes.

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1 Q. How do you interpret that?

2 A. Well, there the dividing characteristic is  
3 unattended. And the reason for that is and that's my  
4 interpretation from a liability standpoint is that if a  
5 dealer runs a report and then turns around and e-mails  
6 that to a third party, that's perfectly within his  
7 rights to do that, and there's nothing incorrect about  
8 that. But it also means that if something goes wrong  
9 from a data breach standpoint, it's his problem. It's  
10 not our problem.

11 So the unattended access just crosses the line  
12 to what happens over and over again, and that's an  
13 unattended report will be set up and it will run, and  
14 it will run faithfully every day, every week, every  
15 month, and nobody knows it's running. The actual  
16 running of an unattended batch job creating a data set  
17 that would be used outside the dealership, there's no  
18 scream of flashing lights that says we are now  
19 currently extracting payroll data.

20 But the point is that if the dealer decides to  
21 extract data out of his system and then put it in his  
22 PC and transmit it to somebody, that's his problem.  
23 When it's automatic and we allow that to occur, all of  
24 a sudden we start getting our hands in the liability  
25 grease.

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1 Q. So firms like DMI, IntegraLink, they were doing  
2 unattended automated access to Reynolds' DMSes?

3 A. Correct.

4 Q. Is there -- I'm just trying to figure out in my  
5 mind whether unattended and automated are redundant.  
6 Can there be automated access to a DMS that doesn't  
7 inflict liability on Reynolds?

8 A. The only one that I can conceive of -- and this  
9 is a theoretical answer. I don't know that it exists  
10 in real life would be vehicle data used to populate  
11 websites, because vehicle data we perceive to be --  
12 since it's available on every dealership's website to  
13 begin with, this is basically public data, and  
14 therefore -- but also it changes all the time. So  
15 therefore, an automated unattended process for  
16 consolidating and transmitting vehicle inventory data,  
17 there is no liability associated with that. But  
18 anything that has name, rank, serial number, you know,  
19 personal information, PII or NPPI, that has tremendous  
20 liabilities associated with that, the likes of which we  
21 have not begun to see.

22 Q. To your knowledge, did Reynolds send out  
23 talking points to the sales staff so that they would be  
24 able to address the security issues after contracts  
25 were signed?

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1           A. I think that's what this document is all about.

2           Q. Were you aware at the time -- this is sort of  
3 the March 2015 time period. Were you aware that these  
4 instructions were being sent out to the sales staff?

5           A. No. And I would have no occasion to be aware,  
6 because Keith Hill is a senior VP of sales. He is an  
7 interesting person in that he was a mathematician, a  
8 math major in college, but he also was a high school  
9 football coach. And so you have the personnel planning  
10 capability he has because, of course, high school  
11 football is all about that, deciding, you know, who can  
12 start, who can play, who does what position, who gets  
13 benched because of being unmannerly with a mathematics  
14 background which means that he understands computer  
15 systems. While he's not a software person, he  
16 understands from a principle standpoint how the guts of  
17 the things are supposed to work.

18          Q. Is he a direct report to you?

19          A. Yes. And I might add a very capable direct  
20 report. As a result, I don't spend a lot of time with  
21 him. My theory as far as personnel management is  
22 concerned is when they can do as good as I can do it, I  
23 need to let them do it.

24          Q. Let me ask you to flip to the second page of  
25 the exhibit, CX 4038-002. And there's a series of hash

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1 marks, and the last hash mark talks about DMI and  
2 IntegraLink, and the last sentence of that hash mark  
3 says, "They now see the risk inherent in facilitating  
4 unattended automated data extraction." Do you  
5 interpret that as the risk inherent in the data being  
6 extracted and then getting into the wrong hands?

7 A. Yes.

8 Q. The bullet above that says "CDK and Reynolds  
9 have partnered together to push data securely. Thus,  
10 85 percent of the market is now in agreement with our  
11 stance." What do you interpret that to mean?

12 A. Well, I interpret that to mean that as  
13 knowledge of the availability of the 3PA program has  
14 now become pretty widespread, and it's now obvious that  
15 CDK has changed their feeling as far as data security  
16 is concerned to no longer be laissez-faire but to  
17 actually have a more secure policy.

18 Q. Do you interpret that to extend to both CDK  
19 agreeing to use RCI for its apps and also to restrict  
20 third-party integration on its own system?

21 A. I'm not focusing on what they do as far as  
22 their own system is concerned, but the fact that they  
23 understand our position and they are not going to try  
24 and hack us.

25 Q. Let me ask you to take a look at Exhibit

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1 CX 4459. CX 4459 bears Bates REYCID0186574. This is  
2 an e-mail dated November 21, 2016 from Tommy Barras to  
3 Mr. Schaefer and Mr. Brockman. Who is Mr. Barras?

4 A. He is an executive VP of software development.

5 Q. Is he a direct report to you?

6 A. Yes.

7 Q. Did he -- was he working at Reynolds when UCS  
8 acquired Reynolds?

9 A. No. He is originally a UCSer. He and I have  
10 worked together probably 48, 49 years.

11 Q. And he's been doing software development with  
12 you in that whole time period?

13 A. Yes.

14 Q. In the body of his e-mail to you at the top of  
15 the first page of CX 4459, the first word in the  
16 sentence is S-Y-S-C-H-E-C-K. What is that?

17 A. Syscheck. I hope you'll bear with me because  
18 some of the explanation of necessity has got to be a  
19 little technical. The operating system that the DMS is  
20 built around is what's called a multi-user operating  
21 system. And what that means is that if you have a  
22 system that has 100 PCs attached to it, each one of  
23 those is a separate user as far as the operating system  
24 is concerned. And the operating system, to the extent  
25 that it is set up that way, can handle 100 different

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1 users pretty much simultaneously. Well, they are not  
2 exactly simultaneously. They are kind of close. Every  
3 minute of computer power that's available, it's used by  
4 many different users of the 100 that are out there.

5 Now, that's really pretty cool except for the  
6 fact that people like in the accounting department that  
7 have big end-of-month reports they have to create,  
8 batch reports are very different in their usage  
9 characteristics. If you have a terminal-based  
10 application, somebody that uses a terminal and then  
11 they won't, and that frees up computer power for all of  
12 the rest of the folks. Even if you have five or six  
13 people, they are not -- each one of them isn't getting  
14 that big a bite of computer power.

15 But in the accounting world, we have big batch  
16 programs that run at the end of the month. Think of it  
17 like a machine gun. They just load in this infinite  
18 supply of ammunition and they take the trigger down and  
19 it just goes with no break. And what that does is you  
20 can actually -- not theoretically, but it actually  
21 happens in practice where the accounting department  
22 with six or seven users can suck up all the computer  
23 power, which means people that run terminal  
24 applications like parts invoices or service repair  
25 orders or service invoices, they have to wait.

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1           And this is a logic issue that is a little hard  
2   to get around, but we devised Syscheck. And what  
3   happens is Syscheck is a dipstick into the computer  
4   usage, and it knows -- you can dipstick and say, okay,  
5   it's 85 percent consumed or 90 percent or 50 percent,  
6   but when it gets up fairly high, and I would say  
7   probably 85 or 90, it's smart enough that it suspends  
8   the batch programs and lets the other 90 users in the  
9   pile, it will get their answers quickly. Because the  
10   transaction base, what you hate is when you enter a  
11   bunch of data entry, hit the button and then you got to  
12   wait.

13           And of course, what that then leads to is users  
14   accuse the DMS provider of a defective system, you are  
15   forcing us to buy a bigger computer. And our only  
16   defense now, which is a pretty good defense, we turn on  
17   Syscheck and people that are wanting to do something,  
18   if the computer system is overloaded, they get a  
19   message on their screen that says, I'm sorry, the  
20   accounting department is doing you in. Anyway, that's  
21   what Syscheck is all about.

22           Q. So what is the reference in that same sentence  
23   to the AUR exemption?

24           A. That one I'm having a little difficulty with  
25   what AUR is. I think it had something to do with where

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1 we basically shut down batch reports that are consuming  
2 computer time with the indication that if we want to  
3 run this thing, you've got to do it at night.

4 Now, interestingly enough, all this sometimes  
5 results in a power play between departments in that the  
6 accounting folks will raise up and beat their chests  
7 and say you guys don't let us run our reports all day  
8 whenever we want to run, tough luck if payroll doesn't  
9 get run on time. And everybody gets all shaky about  
10 that. But that's the wrong answer.

11 The right answer is that the transaction-based  
12 customers need to have as close as we can get to  
13 instant response time because those people are  
14 profit-producing people. The dealership, finance  
15 managers, service managers, they need to have the  
16 capability to get their work done. And the accounting  
17 folks need to wait. And I don't publicize my feelings  
18 on that widely, but I mean, that's the truth.

19 (A recess was taken.)

20 BY MR. ABRAHAMSEN:

21 Q. Let me show you an exhibit we've marked as  
22 CX 4420 and ask you to take a look at it. CX 4420 has  
23 Bates REYCID0186518. The exhibit is an e-mail from  
24 Mr. Schaefer to Mr. Brockman in November 2016. And the  
25 subject of the document is Stone Eagle Request For

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1 Changes. Mr. Brockman, who is Stone Eagle?

2 A. Stone Eagle is a third party that specializes  
3 in analysis of vehicle sales and more especially  
4 vehicle financing and aftermarket sales. And they get  
5 information on car sales, quote, deals. A deal is what  
6 we -- a term we use to apply to the facts of the whole  
7 transaction and the paperwork. The whole transaction,  
8 which is kept in a file folder. And that's what Stone  
9 Eagle wants from us in terms of interface that they  
10 want all the finance deals for a month. And then they  
11 go run all their analysis programs and create nice bar  
12 charts and graphs and that sort of thing so that the  
13 dealership will understand how well they are doing in  
14 that area. And specifically, they'll understand by  
15 person, by finance manager who is doing what as opposed  
16 to looking at the overall department and saying, yes,  
17 it's good or bad or whatever. It's specific  
18 individuals.

19 Q. In the e-mail that's in the middle of the first  
20 page of this exhibit, there's an e-mail from  
21 Mr. Schaefer to you dated March 15, 2016, and the first  
22 sentence of the e-mail says, "Stone Eagle executes this  
23 process today using their interface." What interface  
24 is being referred to in that sentence?

25 A. Stone Eagle has been a customer that's like an

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1 RCI customer, but it predates that. They are a very  
2 mature company. They have been around a long time.  
3 And what's happening here is that we are saying, look,  
4 you got to go forward to the RCI process. They don't  
5 particularly want to do that because it involves them  
6 getting involved with programming, creating a new  
7 interface from the data that they want. Their old  
8 stuff, as far as they are concerned, works perfectly  
9 fine. But we've said that the old process is dying.  
10 You got to go to the standard process. And they are  
11 dragging their feet, frankly. As a matter of fact,  
12 they were the worst that exhibited dragging their feet.  
13 They didn't say no. They just couldn't get it done.  
14 We talked to them and they would give us a new  
15 anticipated deadline, and we would go away and come  
16 back when they missed the deadline. And that had been  
17 going on for literally a couple of years. Other than  
18 that, they are nice people. They pay their bills.  
19 They are not complainers.

20 And in this particular situation, they figured  
21 out that the RCI interface that we had prepared for  
22 them, they had left out the issue where there is a deal  
23 done on paperwork and electronically, but it got  
24 unwound. In other words, it never actually happened,  
25 yet the data was all recorded. And as far as the data

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1 pull that was happening here, we looked like everything  
2 was just fine, but it turns out, out of the month there  
3 were six deals that didn't happen, which impact the  
4 numbers on the reports.

5 And so we've got to do -- this one is called  
6 Deal Reversal Notification. And it was one more thing  
7 we had to do before we could finally get them to move  
8 forward and completely get off the old interface and  
9 get onto RCI.

10 Q. In the footnote -- or I shouldn't say in the  
11 footnote. There's a sentence in the e-mail in the  
12 middle of the first page of CX 4420 that says, "As a  
13 footnote, we've received the latest enhancements for  
14 Stone Eagle that allow us to replace the Stone Eagle  
15 hostile interface." In what way was Stone Eagle a  
16 hostile interface?

17 A. That is a misnomer. It's not a hostile  
18 interface. It's like a hostile interface because its  
19 bandit is different, but it was not hostile in the fact  
20 that we definitely knew about it and condoned it,  
21 probably were even selling it as a service and charged  
22 them for it. But again, it was an obsolete interface.  
23 It was less secure, and we wanted to move to RCI.

24 Q. How was it less secure?

25 A. I don't know the details. I just know that it

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1     was -- we were concerned that it was an oddball.  
2     Whenever things are oddball, nothing good comes out of  
3     that.

4           Q.   Let me ask you to take a look at CX 4463.  
5     CX 4463 has Bates REYCID0265394.  It's an e-mail dated  
6     August 1, 2017 from Mr. Barras to Mr. Brockman on the  
7     top.  And it's a series of e-mails that follow.

8           A.   Yes.

9           Q.   Mr. Brockman, in the first e-mail in the  
10    exhibit, the top one -- the top one on the first page  
11    of CX 4463, the second paragraph states, "Stone Eagle  
12    exemptions go beyond Hendrick.  Third party has 100  
13    exemptions into our ERA systems."  What exemptions are  
14    being discussed here?

15          A.   What's happening here is that the Stone Eagle  
16    interface process has been around for a long time.  It  
17    probably dates before my time at Reynolds.  And where  
18    they have a bypass around the security changes, and  
19    this is not desirable.  It's a hangover.  It's a  
20    cleanup.  And what's happening is Tommy Barras is  
21    telling me, look, it's worse than just the current  
22    Stone Eagle stuff.  There's a bunch of others with  
23    exceptions laying around out there.

24                At this point we are getting more focused on --  
25    we actually have reports now that list every kind of

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1 exception that's in place. And we give these  
2 exceptions or are really forced to give them from major  
3 customers. For instance, here they are talking about  
4 Heritage is a very big customer, Crain, DARCARS is  
5 right here in D.C., and evidently we have some manner  
6 of exception for those folks where they are not on RCI.  
7 They are on something else that predates RCI.

8 This is another example of the situation where  
9 we have power to block things, but there's also a cost.  
10 The cost is customer relations with major accounts.

11 Q. Right. I mean, if you block them, they would  
12 possibly move to a different DMS system?

13 A. The noise would precede anything like that.

14 Q. What noise?

15 A. The customer just calling up and wearing  
16 everybody out.

17 Q. In the second sentence of the e-mail on the  
18 very top of the first page of the exhibit, it says,  
19 DSV, I think it's supposed to be "has" been talking  
20 about moving for years now. No end in sight. What's  
21 DSV?

22 A. Data services, I believe, is what that stands  
23 for.

24 Q. So this is a department within Reynolds?

25 A. Yeah, that reports to Bob Schaefer. And what's

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1   happening is, and as Mr. Barras is being very pointed  
2   in his needling over the situation and quite properly  
3   so, the amount of things that we've had to clean up  
4   inside Reynolds has been huge. And we've aggressively  
5   worked at that, but it's still not done yet.

6           BY MR. LANNING:

7           Q. Mr. Brockman, talking about this idea of  
8   exemptions, were you in the habit or in the practice at  
9   Reynolds to give exemptions to certain customers that  
10   were using what you call hackers?

11          A. Yes. And these would be large customers.  
12   Frankly, in a lot of cases pretty sophisticated folks.

13          Q. Like Hendrick?

14          A. Like Hendrick and Penske, you know, very, very  
15   large folks that have quite capable IT staffs on their  
16   own separate from the work we do for them.

17                These are not lightly handed out. I mean,  
18   particularly for an exemption for a very big customer,  
19   they got to come to me and I got to weigh the sales  
20   issues. In accounts like this, there's some folks that  
21   are just kind of obstinate, and other folks, their  
22   excuse is, well, they are really busy. And there's  
23   other folks that are the delay kind of folks: Well,  
24   yeah, we'll do that but we're really busy right now.  
25   We'll talk about it next summer and get it done that we

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1 constantly have to follow up on. Now we actually  
2 review our lists of exemptions now, which makes it a  
3 lot easier. Before we had to do a lot of legwork to  
4 figure out who was doing what.

5 Q. So in essence, you're saying that for the large  
6 customers that might have those types of exemptions,  
7 they have to be approved by you?

8 A. Yeah. And the number is steadily falling,  
9 especially now that we've got a list.

10 Q. Would Mr. Schaefer make recommendations to you  
11 about whether or not an exemption for a large customer  
12 should be given?

13 A. Yes. I wouldn't necessarily follow that up. I  
14 would talk to Keith Hill.

15 Q. I'm going to just ask you to go back to  
16 CX 4037.

17 MR. COHEN: Bill, could you just tell me what  
18 that was or where it was.

19 MR. LANNING: That's the September 11, 2014  
20 from Robert Schaefer to Bob. It's the one-pager.

21 MR. COHEN: Okay. Do you know how long ago you  
22 guys used it?

23 MR. LANNING: It was this morning.

24 MR. COHEN: Thank you.

25 BY MR. LANNING:

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1 Q. Mr. Brockman, I would like to direct your  
2 attention to something we were talking about earlier  
3 today, which is if you go down near the bottom of the  
4 page where the little letter C is and it says,  
5 "Communication plan and marketing announcement" under  
6 number 4, do you see that?

7 A. Yes.

8 Q. And I believe when we talked about this earlier  
9 today, we were talking about the sentence that says,  
10 "How will the agreement be announced to the market --  
11 they need to get this identified and understood quickly  
12 due to the CDK global announcement."

13 A. Yes.

14 Q. Do you see that?

15 A. Um-hum.

16 Q. I believe it was your testimony, of course we  
17 can go back and read it, but you were saying that this  
18 was CDK's issue about the marketing and the  
19 communication; is that correct?

20 A. Yes.

21 Q. And my question to you, then, is what was CDK's  
22 concern about getting an agreement where you were going  
23 to either manage jointly a communication to the  
24 marketplace or that you were going to at least review  
25 this?

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1           A. Well, I think the issue is that they wanted to  
2   do what they wanted to do. They would much prefer to  
3   actually have us agree to what they wanted to do, but I  
4   believe in the end we did not agree. In this case  
5   here, they went ahead and did it or were going to do it  
6   anyway.

7           Q. But was there an expression of what their  
8   concern was about having this in relation to their  
9   announcement of going public?

10          A. Not that I recall. There probably was, but I  
11   wasn't sensitive enough to remember.

12          Q. And was it related in any way about a concern  
13   that Reynolds might make an announcement about the  
14   agreement that CDK didn't like?

15          A. Well, I think probably that was part of it  
16   because if we made the announcement the way we would  
17   like, it would be very, very damaging to them.  
18   Truthful, but it would be damaging.

19          Q. What do you mean? What would this statement  
20   say that might be truthful and damaging to them?

21          A. Well, the truthful statement would be that they  
22   had been hacking into our systems for many years and  
23   quite a large number of systems. And I'm sure that  
24   would have caused telephones to ring at CDK with  
25   customers calling, was I one of the ones, that sort of

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1 thing.

2 Q. Was there also an element to it that Reynolds  
3 might take the tack competitively that we were right  
4 all along on security and now that you are joining us?

5 A. I don't know what they were thinking about, but  
6 that's one of the things they could have been thinking  
7 about.

8 Q. So did you discuss this with Mr. Schaefer?

9 A. Not that I recall.

10 Q. Was there any discussion that CDK did not in  
11 advance of its going public want to announce that they  
12 were changing their position on being open or closed?

13 A. Again, I'm not aware of anything like that.

14 Q. I have just two more questions on another  
15 document, which is CX 4273.

16 MR. COHEN: Would you mind telling us what that  
17 is again?

18 MR. LANNING: The SIS settlement.

19 BY MR. LANNING:

20 Q. Could you please turn to CX 4273-003 and go  
21 down to V, section V or numeral 5 that starts with the  
22 exception of the wind down period for SIS. Do you see  
23 that?

24 A. Yes.

25 Q. I just had one question here. If you go to the

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1 sentence that's about midway down, and it says, "For  
2 the avoidance of doubt, the covenants set forth in this  
3 paragraph 3(a)(v) are not intended as a covenant not to  
4 compete." Do you see those?

5 A. Yes.

6 Q. I guess I'm curious, why was this put in the  
7 SIS agreement?

8 A. Well, I would like to be helpful, but frankly,  
9 I don't know because I wasn't part of the crafting of  
10 these documents. And just looking at it today, it  
11 looks to me like it was -- an attorney wanted to put in  
12 some sort of blanket statement.

13 Q. Were you competing with SIS at this time?

14 A. SIS is a data extractor where they in bandit  
15 mode go into a system. We don't do that. We've never  
16 done that and therefore, we don't compete with them.  
17 They have that market all to themselves.

18 Q. That's why I was curious about why the language  
19 was in there. If you are not competing with them, why  
20 are you concerned about it being construed as a  
21 covenant not to compete?

22 A. I have no idea.

23 MR. LANNING: Thank you very much. That's it  
24 for me.

25 MR. COHEN: Mr. Brockman, you do have a right

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1 to clarify any testimony that you have given over the  
2 past two days. Do you have any clarifications to make?

3 THE WITNESS: No.

4 MR. ABRAHAMSEN: Then we will adjourn today's  
5 session. We will keep the record open. And everybody  
6 can go to lunch.

7 (Whereupon, the proceedings at 1:08 p.m., were  
8 adjourned.)

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CERTIFICATE OF REPORTER

I, Deborah Wehr, do hereby certify that the foregoing proceedings were taken by me in stenotype and thereafter reduced to typewriting under my supervision; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were taken; and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.



Deborah Wehr, RPR

Notary Public





**Brockman, Bob**

**From:** Welch, Peter [pwelch@NADA.org]  
**Sent:** Friday, November 08, 2013 1:44 PM  
**To:** 'Robert Schaefer'; Bob Brockman (bob\_brockman@reyrey.com); forrestmcconnell@gmail.com; Miller, Bradley; O'Neill, Finbarr  
**Subject:** NADA/Reynolds Data Meeting  
**Attachments:** Agenda - RR 11-13-13.docx


Gentlemen:

As I discussed with Bob Schaefer this afternoon, I will unfortunately not be able to attend next Wednesday's meeting in Dayton. The Consumer Financial Protection Bureau has abruptly decided to hold an "Auto Finance Forum" next Thursday in D.C. and my presence at that event is necessary together with lots of preparation. However, the meeting will go forward with Forrest McConnell (our Chairman-Elect) Brad Miller (from our Regulatory Affairs Dept.) and Fin O'Neill (our outside consultant) representing NADA. I have attached a proposed agenda and invite any of you to add any additional items. It's my understanding that the meeting will commence at 8:00 a.m. Please confirm the start time and also let all of us know by return email the precise location of the meeting and who our contact person should be when our team arrives.

Thanks again for your time on this issue and if you have any questions, I can be reach at the below number.

*Peter*

Peter Welch  
National Automobile Dealers Association  
8400 Westpark Drive | McLean, VA 22102  
(703) 821-7100 | [pwelch@nada.org](mailto:pwelch@nada.org)

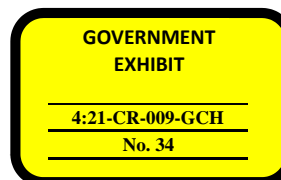
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**Memo**

To: NADA Members  
From: NADA Legal and Regulatory Affairs  
Date: August 28, 2013  
Re: Dealer Data Guidance – Sample Service Provider Contract Language

Dealers collect a large volume of information from their customers in their day-to-day operations, with much of that information categorized under federal law as highly sensitive “non-public personal information” or “NPPI.” What information is NPPI is a complicated topic, but generally speaking, NPPI is any personal information that a dealer collects about an individual in connection with providing a financial product or service, that is not otherwise “publicly available.”<sup>1</sup> This could include information such as that contained on an individual’s credit application or credit report,<sup>2</sup> but it could also include any information that identifies that individual as having financed or leased a vehicle, such as APR, down payment, or monthly payment.<sup>3</sup>

This is important because the information’s status as NPPI means that the dealer is subject to several obligations under federal law to protect and maintain its privacy. Even customer information that does not rise to the level of NPPI can be sensitive to the consumer and the dealer and thus should be protected closely by dealers. In addition, this customer information has tremendous commercial value to the dealer and could be deemed to be a trade secret under state law.<sup>4</sup> Of course, this data has value to others as well and, as a result, there are a number of entities who wish to gain access to the data.

This customer data is generally stored in the dealer DMS and related computer systems, along with a great deal of other sensitive financial data about the dealership and its employees. In today’s world of online commerce, dealers, like many other small businesses, rely on a number of third party service providers to store the data or provide technical or other services

<sup>1</sup> See, e.g., <http://www.ftc.gov/ftb/nppl/nppl.htm>

<sup>2</sup> This could include information such as name or address if obtained via that application or report. This creates obvious difficulties when seeking to limit “sharing” of NPPI by data itself.

<sup>3</sup> For more on finance or lease “identifiers” and why they are NPPI, see “A Dealer Guide to the Privacy Rule and the Model Privacy Notice” at [www.nadadocs.com](http://www.nadadocs.com).

<sup>4</sup> While each state has its own laws relating to trade secrets, a customer list or other data may be deemed a trade secret in certain circumstances although you generally have to show that you have taken steps to keep the information secret. This is yet another important reason why you want strict controls over who has access to your customer data.

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that require access to certain data in the dealer DMS. The result is that this customer and other sensitive data (together "Dealer Data") raises difficult and sensitive issues for dealers that they must understand when they enter into contracts that could allow access to Dealer Data.

The basic problem is the inherent conflict between, on the one hand, the need to provide access to manufacturers, vendors, and other third parties who legitimately require access to portions of the Dealer Data so that they can provide a service to the dealer, and, on the other hand, the dealer's regulatory duties regarding the Dealer Data, as well as their legitimate business interests in the Dealer Data.

To properly manage this conflict, dealers must (1) understand the issues at stake; (2) understand who is seeking to access their Dealer Data, and why; (3) control and monitor that access, and (4) ensure that the contracts governing that access address the relevant issues and contain the appropriate language to protect dealers' business interests and regulatory responsibilities.

*This memo does not, and is not intended to, provide legal advice, nor advice about the business issues in dealers' vendor or other contracts. Instead, it is intended to highlight several recurring issues in contracts implicating access to Dealer Data, and the federal regulatory issues raised by them. Dealers must consult with their own counsel with respect to all contracts, as well as all federal, state, and local regulatory obligations.*

#### The Regulatory Requirements

Details about the underlying regulatory requirements are complex and largely outside the scope of this memo. Dealers should review the numerous dealer guides available at [www.nadauniversity.com](http://www.nadauniversity.com) covering the relevant federal regulatory issues including the GLB Safeguards Rule, GLB Privacy Rule and Model Privacy Notice, the Affiliate Sharing and Marketing Rules, as well as telemarketing and other guides for more details about the various rules affected by sharing or allowing access to Dealer Data, and associated issues potentially implicated by certain types of service provider contracts.

However, given the need to understand at least the basic issues at stake in order to grasp the implications of certain contractual provisions, keep in mind that dealers' duties with respect to Dealer Data are governed by two primary federal regulations – the Safeguards Rule and the Privacy Rule.<sup>5</sup> Broadly speaking, the Safeguards Rule requires dealers to take certain procedural and technical steps to ensure that certain customer data is protected from inadvertent disclosure or other access by third parties (such as theft, hacking, etc.) who could then use the information to steal an individual's identity or otherwise harm the consumer. Similarly, the Privacy Rule is intended to protect consumers' financial privacy and prohibits dealers from sharing NPPI with any third party unless (1) an exception applies, or (2) they first provide the customer with a privacy notice and allow the customer the chance to opt out. Dealers must also provide their customers with a notice informing the customer of their information sharing practices.<sup>6</sup> As a practical matter the overwhelming majority of dealers provide a notice that

<sup>5</sup> These are the shorthand names for two regulatory provisions under the Gramm-Leach-Bliley Act ("GLB").

<sup>6</sup> The FTC's Model Privacy Notice includes all the required notices in one form.

#### DEALER DATA MEMO – NOT INTENDED AS LEGAL ADVICE

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states that they do NOT share NPPI with any third parties.<sup>7</sup> Of course, this means that dealers must honor the promise not to share the customers' data.

An important issue to understand is that the FTC may consider any third party "access" to NPPI to be the equivalent of "sharing."<sup>8</sup> In other words, if a third party has access (via your computer network or otherwise) to NPPI or *could* access it, you may be deemed (or at least alleged) to have "shared" that data, even if the third party never actually accesses, obtains, processes, or relies upon the data.<sup>9</sup>

#### "Service Providers"

Another important issue you must understand under both the Safeguards and Privacy Rule for the purposes of this memo is that of the "service provider." The federal regulations contemplate that entities will use the services of third parties, and may need to share or otherwise expose NPPI to those third party service providers. Section 313.13 of the Privacy Rule contains one of the "exceptions" mentioned above, and allows a dealer to share NPPI with a service provider without providing the required opt-out opportunity described above,<sup>10</sup> but *only if you do so pursuant to a contract that puts specific restrictions on the service provider.* The idea is that you can provide access to the sensitive information, but *only* to the extent needed to provide the service and that service provider cannot then use or share the information with anyone else.

The Safeguards Rule also contemplates the use of service providers, but again, only subject to restrictions. Under the Safeguards Rule, the dealer must (1) "[t]ak[e] reasonable steps to select and retain service providers that are capable of maintaining appropriate safeguards for the customer information at issue"; and (2) "[r]equir[e their] service providers by contract to implement and maintain such safeguards."<sup>11</sup> In addition, the FTC states that you must also "oversee their handling of customer information."<sup>12</sup>

The Safeguards Rule defines "service provider" as "any person or entity that receives, maintains, processes, or otherwise is permitted access to customer information through its provision of services directly to a [dealer subject to the Rule]."<sup>13</sup> This definition would include third party vendors including DMS providers, and in some circumstances could also include your manufacturer.

<sup>7</sup> The reasons for this are generally outside the scope of this memo. However, it is important to note that even if a dealer were to provide notice that it will share NPPI, it must also provide a reasonable opportunity for the individual to opt-out of that sharing. The FTC considers 30 days to be a minimum reasonable period. As a result, even if dealers were to share, they would have to ensure that they would not do so for 30 days after gathering the NPPI. As a practical matter, this would be difficult to implement, and would in many cases make the sharing of the NPPI commercially and practically unfeasible in the service provider context.

<sup>8</sup> NADA does not necessarily share or endorse this position, but it is important to understand what the agency's position is likely to be, and in terms of protecting yourself in your contracts you should understand this reality. Whether it is technically "sharing" under the federal regulatory requirements or not, there are good business and practical reasons to understand (and limit) third party access to your data.

<sup>9</sup> As noted below, the definition of "Service Provider" under the Safeguards Rule includes any entity "that receives, maintains, processes, or otherwise is permitted access to customer information."

<sup>10</sup> You must still provide the privacy notice, and if appropriate, that notice must disclose that you share with service providers.

<sup>11</sup> See <http://business.ftc.gov/documents/rules-and-requirements/industry-and-consumer-information-protecting-safeguards-rule>

#### DEALER DATA MEMO – NOT INTENDED AS LEGAL ADVICE

### The Problem

The primary issue under these federal regulations generally arises because of a disconnect between the duties dealers have and the promises they may have made to their customers, and the demands for access to Dealer Data sought by third parties. While every situation is different, the basic issue can arise in one of several ways. For example:

- (1) The dealer wishes to engage the services of a third party service provider that requires access to Dealer Data to perform the service, but fails to ensure that the appropriate contractual provisions and other restrictions are placed on the service provider with respect to Dealer Data.
- (2) A manufacturer establishes a marketing or other "program" that either directly or utilizing the services of a third party service provider requires dealers to allow access to Dealer Data, and the dealer either fails to ensure, or is prevented by the manufacturer (or its service provider) from ensuring that the appropriate contractual provisions and other restrictions are placed on the service provider.

In either event, the result is often that Dealer Data, potentially including NPPI, could be "accessed" or "accessible" to the third party vendor, and the dealer runs the risk of violating its Privacy Notice promise to its customers, its Safeguards Rule duties,<sup>12</sup> as well as potential violations under other federal law.<sup>13</sup>

Unfortunately, these scenarios do occur. While the duties and responsibilities are the same, a dealer's response to each scenario is likely to be somewhat different. In the first scenario, a dealer must be vigilant in policing and negotiating their contracts to ensure that the required contractual provisions are included in all service provider vendor contracts. There are a number of other contractual provisions that, while perhaps not required, may be worthy of consideration by the dealer and its attorney in the vendor agreement. We discuss some of those provisions below.

The second scenario often presents more difficult issues for dealers because these manufacturer "programs" are generally presented by the manufacturer to the dealer as, for all intents and purposes, requirements.<sup>14</sup> This means that dealers may in many cases have more limited ability to police and amend these contracts to ensure they are protected adequately against regulatory and other risks. While some contractual protections may be optional, it is

<sup>12</sup> In addition, in scenarios involving violations of the Privacy and Safeguards Rules, the FTC will also generally allege a violation of Section 5 of the FTC Act on the basis that a failure to abide by the Privacy Notice promises and the failure to maintain adequate safeguards is "unfair" and/or "deceptive." See, e.g. a recent FTC action brought against a dealer, alleging such violations: <http://www.ftc.gov/ftcdoss/1623231/comex.shtml>

<sup>13</sup> For example, under the CAN SPAM Act, if a customer opts-out of receiving email from you, you thereafter cannot "sell, lease, exchange, or otherwise transfer or release" that email address to any third party, "including through any transaction or other transfer involving" a list that contains that email address. See 15 U.S.C. 7704 (3)(4)(iv). Similar issues arise with phone numbers on your company-specific "Do-Not-Call" list under federal telemarketing regulations. As a result, access to phone numbers or email addresses, even if not NPPI, raise unique and potentially difficult concerns.

<sup>14</sup> For example, dealers may be told that their "participation" in a particular program is required to qualify for certain incentive or other program payments, or that participation is required under the dealer franchise agreement.

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important to remember that dealers should not agree to provide access to NPPI, even in these manufacturer programs, in violation of their Safeguards and Privacy Rule responsibilities.

This means that unless their Privacy Notices state otherwise,<sup>15</sup> dealers may not provide access to NPPI to anyone, including their manufacturer, unless they do so in connection with a contract (a) pursuant to which the manufacturer is providing a service to the dealer that requires access to the NPPI, and (b) that contains the required contractual provisions (or unless one of the other exceptions to the Privacy Rule applies).<sup>16</sup> NADA understands that this can put dealers in a difficult, if not untenable position. However, it is vitally important, for dealers and manufacturers alike (and ultimately for your customers) that these contractual protections be included. While the dealer is ultimately responsible for protecting and not sharing protected data, regulators and plaintiff lawyers are not likely to hesitate in looking to the manufacturer should a problem arise.

Under both scenarios it is often common for the contracting party to subcontract some of the work; that is, to use another third party to either aid in providing, or to actually provide the service itself. For example, if a third party requires access to the dealer DMS to provide services to a dealer related to their vehicle inventory, they may use another entity to actually interface with the dealer's DMS and "extract" the inventory data that they need. This is important to understand because if you do not ask you may not even be aware that this third party is in your DMS system.<sup>17</sup> And of course, if they have accessed your data, and are not bound by the required contractual restrictions to only take what they require, and not to store, use or share the data, then this can create regulatory compliance and other problems for the dealer (and the service provider and/or manufacturer).

Remember as well that under both scenarios, the third party (and all subcontractors) must also actually be providing the dealer a service and the data that they access must be required to provide that service. That means that you cannot allow access to NPPI just because a manufacturer requests it. For example, you cannot share any information that would identify a customer as a lease or finance customer in a retail delivery report to your manufacturer, unless the manufacturer has a legitimate business need for that information to process the transaction on behalf of the customer (a lease incentive for example).<sup>18</sup>

It also means that you cannot grant access to NPPI or other sensitive data if it is not required to provide service you have contracted for. For example, if the service provider is providing a service to your parts department that requires access to parts data in your DMS, you generally cannot allow them to have access to your sales records (unless for some reason this information is required to provide the service). This means that you need to (1) understand

<sup>15</sup> If the dealer is granting access to NPPI, the required Safeguards and Privacy Rule contractual provisions must be in the contract regardless of the content of their Privacy Notice.

<sup>16</sup> See the NADA Dealer Guide to the Privacy Rule and the Model Privacy Notice for more.

<sup>17</sup> It is also important to understand as part of your obligation to conduct due diligence in selecting a service provider.

<sup>18</sup> It is not enough that the manufacturer itself has a business "need" for the data. This exception only applies if they need the information in order to process the transaction on behalf of the customer. If a manufacturer asks this information, you should try to explain why you cannot share the information. You should also consider asking the manufacturer to explain to you in writing which exception to the Privacy Rule applies to the information they are seeking to obtain and why.

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exactly what data a service provider needs to provide the service, and (2) take the appropriate technical steps to ensure that their access is limited to that data and that data only. Remember, it is not only the data they actually take, but the data they *could take* (have access to), that you must control. You should also audit and monitor their access to ensure they are not in breach of the contractual restrictions.<sup>19</sup>

#### Contract Provisions

As discussed above, dealers must include the required Safeguards and Privacy Rule provisions in all vendor contracts.<sup>20</sup> Attached at Exhibit A are several possible sample contract provisions you may want to include in your service provider contracts to meet the requirements under the Safeguards and Privacy Rules.<sup>21</sup> While every service provider vendor contract is different, several other issues tend to arise in many of these contracts, and dealers should consider addressing them in their third-party service provider contracts. For example:

(1) Restrictions on non-contracting third parties. As discussed above, if the contracting service provider uses the services of another third party and that third party has access of any kind to any of your Dealer Data, you should ensure via contract that the subcontracting third party also meets the same Safeguards and Privacy Rules restrictions you placed on the contracting party. Without a direct contractual relationship with these third parties, their access could nullify the careful steps you have taken to protect yourself with respect to access by the service provider. There are several ways to accomplish this. One potential approach would be to expressly list the subcontracting third parties in the Safeguards and Privacy Rule provisions and requiring the contracting party to warrant that any third parties with access will meet those contractual requirements.

(2) Requirement to provide reports of data accessed. Given the technical complexity of some of these issues, and the lack of visibility dealers may have in these processes, you may also want to consider asking the service provider via contract to provide you with a list of (1) all data fields that they actually extracted from the DMS or other system, and (2) all data fields they had access to, based on their password. This second issue is potentially more difficult, but remember that if they have access to the data, there is potential regulatory risk for the dealer, even if the vendor never actually obtained or accessed that data. You may want to consider including audit rights that would allow you to confirm the reports from the vendor. The feasibility and utility of this type of provision may be determined in large part by the capabilities of your DMS or other systems. You should work with your vendors to determine the best way to gather this data.

<sup>19</sup> Some of these steps are addressed below, but specifically, you could consider steps such as: (a) requiring the vendor to send you a written report detailing the data fields they have access to; (b) seeking annual notifications from your vendors stating that they have only accessed the fields outlined in the report; (c) routinely audit vendor password access; and; (d) work with your DMS and other vendors to audit what third parties have access to your system(s), and what data they are accessing.

<sup>20</sup> From the Privacy Rule perspective, the provision must be included if the dealer wishes to rely on the service provider exception to share the information with (or allow access to) the vendor.

<sup>21</sup> Again, these are examples only. This is not intended as legal advice; you should consult your attorney to finalize the language in your contracts, and to ensure that you have considered all state and local issues.

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(3) Data breach provisions. Another issue that dealers may want to consider in any agreement with a service provider that implicates access to Dealer Data is the issue of a state law "data breach." Almost all states have a data breach statute that, broadly speaking, requires a dealer to notify their customers if there is a "data breach" involving that customer's personal information. The state law definitions vary, but basically a "breach" is deemed to have occurred anytime there is unauthorized access to the data (e.g. a hacking incident) or if the dealer *loses control* of the data (e.g. a lost laptop or phone containing personal information.) It is important to note a few things about these statutes, (again broadly speaking because they all vary): (a) that the data does not actually have to be accessed or used improperly, a "loss of control" is all that is needed (that is why lost laptops are the most common types of data breaches); (b) that "personal information" can be much more broadly defined than NPPPI under federal law (e.g. CA where a name and a zip code may be enough), and; (c) that in most cases a dealer can avoid the duty to notify if the data is "encrypted." It is not always clearly defined in the state statutes what "encrypted" means, however you should nevertheless consider requiring that the service provider "encrypt" any data that is accessed, transmitted, or in any other format where you or they could "lose control" of that data. It is crucial that you work with your counsel to determine your state and local law in this area (and all others addressed in this memo). You may want to consider a provision that addresses who is responsible for customer notification and related duties (and costs) in the event of a breach and you may also want to consider requiring the data to be encrypted.<sup>22</sup>

(4) Regulatory issues where service provided is marketing-related. If the service provider requires access to your Dealer Data in order to provide marketing services to you, a number of other regulatory requirements could arise, and you should consider whether to address them in the contract. For example:

- a. if the services include e-mail marketing services, issues could arise under CAN SPAM (governing email marketing);
- b. if the services involve phone calls or text messages, the federal telemarketing rules (the TCPA and the Telemarketing Sales Rule) could be implicated, and;
- c. if the services include "reputation management" or other services related to social media or customer comments or review, the FTC Guide to Endorsements or Testimonials and related disclosure duties could also be implicated.

Again, these issues are outside the scope of this memo, but it is obviously important in a contract implicating any of these federal duties to work with your attorney to ensure that you are protected in the event of a violation of these or other related duties. For example, if the vendor is making telemarketing calls on your behalf, who is responsible for ensuring "Do-Not-Call" compliance? How will you ensure that the vendor honors your company-specific "Do-Not-Call" list or your CAN SPAM "opt-out" list? At the end of the day, it is the dealer who faces the regulatory risk from non-compliance by the service provider. As a result, it is important again that you work with your counsel to make sure you understand the scope of the services to be performed, and that you work with the service provider to ensure compliance.

<sup>22</sup> You may also want to consider whether your vendor is required to maintain "Cyber Liability" insurance coverage. Broadly speaking, this type of insurance covers the costs associated with a data breach.

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(5) License Grant. Generally these vendor and manufacturer service provider agreements will also contain a requirement that the dealer grant the vendor or manufacturer a license to the Dealer Data.<sup>23</sup> Dealers and their counsel should carefully consider the implications of any such grant, and in particular, if the scope of the license grant exceeds the Safeguards or Privacy Rule restrictions, it could create regulatory risk for the dealer. In other words, if you have the appropriate Safeguards and Privacy Rule provisions that limit access only to what is needed to provide the service, but the agreement also contains a broad license grant that allows access to non-necessary NPPI, it could be problematic.<sup>24</sup> In some cases, a license may be justifiable, but dealers should be careful to ensure that it is needed, and if so, whether the scope of any such license is appropriate.

(6) Description of the Services/GLB Service Provider Agreement. You may want to consider explicitly stating in the contract (a) the services that are to be provided pursuant to the agreement; (b) that the vendor is a "service provider" pursuant to GLB, and (c) the data fields the vendor needs to take (and have access to) to provide the services.

#### Dealer Data "Checklist"

These are just some of the issues that routinely appear in service provider contracts. Of course there may be others, and dealers must work with their counsel and internal compliance staff to ensure not only that their contracts contain the required protections, but that the dealership's practices and procedures also adequately protect dealer data. In addition to the regulatory duties imposed under the Safeguards Rule, Exhibit B contains a non-exhaustive list of practical and other steps that dealers should consider taking with respect vendor contracts and to Dealer Data more generally. Many of these points raise a number of complicated issues, and as always dealers should work with their attorneys, consultants, IT staff, and vendors to work through and understand the issues presented.

The bottom line is that Dealer Data is sensitive, important, and valuable. You must have a good understanding of what you have, what the rules are, who has access (including any intermediaries who are not parties to the contract), and who is in control of these issues at your store.

<sup>23</sup> In some cases, we have seen vendor agreements include not only exceedingly broad license grants, but also provisions purporting to grant outright ownership of Dealer Data to the vendor. Of course any such provision would be problematic for all the reasons outlined above.

<sup>24</sup> Many of these agreements will also seek to grant a license to Dealer Data that has been "de-identified" and/or "de-personalized." This generally means that the data (which may or may not have been NPPI) has been stripped of any feature that could identify the customer. This raises complicated and important legal, regulatory, and business issues, and you should carefully review any such license grant with your legal counsel.

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**Exhibit A - Sample Service Provider Contract Provisions:**<sup>25</sup>

Here are several possible examples you could use to ensure that you have the contractual language required under the Safeguards and Privacy Rules in your contracts with your service providers. Some provisions in these examples may not be appropriate in every circumstance. These can and should be combined or otherwise modified as appropriate - *consult with legal counsel about appropriate language to use for your dealership*:

**GLB Service Provider Provision:** (Example)

Dealer<sup>26</sup> and Service Provider acknowledges that this contract constitutes a service provider agreement between Service Provider and Dealer subject to the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801, *et seq.* ("GLB Act") and its implementing regulations. Service Provider warrants and represents that access to certain customer information is required to provide the services pursuant to this Agreement ("Services"), and agrees that it will only access that customer or other data from Dealer's computer system(s) that it is authorized to access and that is required to provide those Services.

**Safeguards -- Required as described above:** (Examples)

1. Service Provider agrees to protect and secure any and all customer and other data it receives or obtains in any way from Dealer pursuant to this Agreement as required under all applicable privacy and data security laws, and to implement and maintain physical, electronic, and procedural safeguards as provided by Dealer from time to time in Dealer's sole discretion,<sup>27</sup> or of which Service Provider is aware or should reasonably be aware of. Such safeguards shall, at a minimum, comply with applicable federal, state and local laws and regulations. The foregoing shall apply to all of Service Contractor's employees, as well as any subcontractors, affiliates, or other third parties with legitimate access to information and data relating to Dealer or Dealer's customers pursuant to this Agreement ("Authorized Third Parties").

<sup>25</sup> These are examples only, and you may wish to incorporate some, all, or portions of one or more of these provisions in your service provider agreements. YOU SHOULD CONSULT YOUR ATTORNEY to ensure that all federal, state and local requirements are met.

<sup>26</sup> All examples assume that capitalized terms are defined elsewhere in the Agreement.

<sup>27</sup> With language such as this, it would likely be appropriate for the dealer to have written guidelines establishing certain minimum standards for such a program, and share those standards with the vendor. For example, in a recent action against a dealer, the FTC cited the dealer for failure to institute certain specific practices including a failure to: "(1) assess the risks to the consumer personal information it collected and stored online; (2) adopt policies, such as an incident response plan, to prevent, or limit the extent of, unauthorized disclosure of personal information; (3) have reasonable methods to prevent, detect, and investigate unauthorized access to personal information on its networks; such as inspecting outgoing transmissions to the internet to identify unauthorized disclosures of personal information; (4) adequately train employees about information security to prevent unauthorized disclosure of personal information; and (5) employ reasonable measures to respond to unauthorized access to personal information on its networks or to conduct security investigations where unauthorized access to information occurred." (See here <http://www.ftc.gov/roscoff/102109/120007/roscoffactionsummary.pdf>.) Dealer vendors should be held to at least the same security standards as the dealer themselves. Consult your attorney, review the NADA Dealer Guide and/or go to <http://business.ftc.gov/consumers/23-financial-institutions-and-consumer-information-protecting-safeguards-rule> for more details.

2. Service Provider represents and warrants to Dealer that Service Provider (and any subcontractors, affiliates, or other third parties with legitimate access to information and data relating to Dealer's customers pursuant to this Agreement ("Authorized Third Parties")) presently maintains, and will continue to maintain and periodically test the efficacy of, appropriate information security programs and measures designed to ensure the security and confidentiality of "Customer Information" (as defined in 16 CFR § 314.2(b)). Such information security programs and measures shall include, at a minimum, appropriate procedures designed to (1) protect the security and confidentiality of such information, (2) protect against anticipated threats or hazards to the security or integrity of such information, and (3) protect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to any customer of Dealer. Dealer, its representatives and applicable governmental regulators may, from time to time, also audit the security programs and measures implemented by Service Provider pursuant to this Section, and Service Provider shall not impose any fees or charges on Dealer or its representatives in connection with any such audit.

Privacy Rule -- Required as described above: (Examples)

1. Access to NPPI not required to provide the Service:

Service Provider understands and agrees that it only has permission under this Agreement to access and use that data that is required to provide the Services; those data fields are listed at Exhibit \_\_\_\_\_. In no event will Service Provider access, store, share, disclose, or use any nonpublic personal information (as that term is defined under the Gramm-Leach-Bliley Act) from Dealer. Service Provider also agrees not to access, enhance, sell, store, share, disclose, distribute, create derivative works from, or use any data accessed from Dealer's DMS or other computer system or otherwise received from Dealer ("Dealer Data") for any reason, except as necessary to provide the Services, and only as long as required to provide the Services to Dealer. Service Provider has no ownership or other rights in the Dealer Data, and may not use Dealer Data in any form to append, trigger, update, enhance, or enrich its own data or data service or any third party data service. Dealer, its representatives and applicable governmental regulators may, from time to time, also audit the data accessed by Service Provider pursuant to this Agreement and the use of that data, and Service Provider shall not impose any fees or charges on Dealer or its representatives in connection with any such audit. The foregoing shall apply to all of Service Contractor's employees, as well as any subcontractors, affiliates, or other third parties with legitimate access to information and data relating to Dealer's customers pursuant to this Agreement ("Authorized Third Parties").

2. Certain access to NPPI required to provide the Service:

Service Provider agrees to only access and use that data that is required to provide the Services, and agrees not to access, store, share, disclose, or use nonpublic personal information (as that term is defined under the Gramm-Leach-Bliley Act) received from Dealer except as necessary to provide the Services. Service Provider also agrees not to access, enhance, sell, store, share,

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disclose, distribute, create derivative works from, or use any data accessed from Dealer's DMS or other computer system or otherwise received from Dealer ("Dealer Data") for any reason, except as necessary and for the time necessary to provide the Services. Service Provider has no ownership or other rights in the Dealer Data and shall not use Dealer Data in any form to append, trigger, update, enhance, or enrich its own data or data service or any third party data service. Service Provider agrees not to share the password or other access to Dealer Systems with any other party not specifically outlined in this Agreement, and upon termination of this Agreement agrees that it will no longer access any Dealer Systems or Dealer Data, and to return and/or destroy the password. Dealer, its representatives and applicable governmental regulators may, from time to time, also audit the data accessed by Service Provider pursuant to this Agreement and the use of that data, and Service Provider shall not impose any fees or charges on Dealer or its representatives in connection with any such audit. The foregoing shall apply to all of Service Contractor's employees, as well as any subcontractors, affiliates, or other third parties with legitimate access to information and data relating to Dealer's customers pursuant to this Agreement ("Authorized Third Parties").

Third Party Subcontractors: (Example)

Service Provider warrants and represents that it will: (a) only engage the services of a subcontractor, affiliate, or other third party in connection with its provision of services pursuant to this Agreement ("Authorized Third Party") if required to provide the Services; (b) exercise the requisite due diligence in selecting any Authorized Third Parties to ensure that the Authorized Third Parties can and will safeguard any customer or other information in their care; (c) require any Authorized Third Parties by contract, to abide by Subsections \_\_\_\_*[insert Safeguards Rule subsection]*\_\_\_\_, \_\_\_\_*[insert Privacy Rule subsection]*\_\_\_\_,<sup>28</sup> \_\_\_\_*[insert Confidentiality subsection]*\_\_\_\_<sup>29</sup>, and any other relevant provisions of this Agreement; (d) specify by contract that all Authorized Third Parties shall have no license or any other proprietary or intellectual property rights in the Dealer Data pursuant to their agreements with Service Provider; (e) ensure that the Authorized Third Party does not access, enhance, sell, store, share, disclose, distribute, create derivative works from, or use any Dealer Data in any way except as required under this Agreement; (f) provide a list of all Authorized Third Parties (explaining data accessed by each and explanation of role) to Dealer for approval, and seek prior written approval from Dealer before altering or adding to that list, and; (g) require Authorized Third Parties to ensure that any Dealer Data that must be transmitted or stored as part of the Service is transmitted in an encrypted fashion, and in accordance with applicable industry security standards.

<sup>28</sup> Insert the Safeguards and Privacy Rule restriction Subsections (such as those in the above examples) that apply to the Service Provider here.

<sup>29</sup> Insert the provision in the Agreement (if any) addressing treatment of Confidential Information.

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Exhibit B – Dealer Data “Checklist”

CHECK WHEN COMPLETED

- ☐ • Know and understand who is in your systems and what they have access to:
  - Both employees and any third parties
  - Review access to your DMS and all CRM databases, your websites, etc.
    - Work with your vendors to determine
    - Don't forget CRM or other (non-DMS) databases
      - Could contain NPPI – (e.g., online credit applications) or other sensitive information
  - Websites
    - What Dealer Data is being accessed by third parties from your website?<sup>30</sup>
    - Work with your website provider to ensure protections against scraping /other data collection are in place.
  - Require third parties with access to provide written list of data they have access to and what they have “taken.”
  - Work with your DMS provider to ensure proper controls and reporting
  - Review all current and future contracts for required language
    - Understand what they need and why
    - As discussed above, you MUST limit this via contract
    - Audit/confirm/run reports/hold them accountable/and document!
  - Remember that even if it is not NPPI
    - You still must maintain security
      - Customer relations issues
      - Employee issues
      - Non GLB regulatory duties
    - It has tremendous value
    - Trade secret implications
- ☐ • Understand and control remote access issues
  - Mobile devices raise tremendous data access and data breach concerns
  - Limit access
  - Control devices
  - Work with your counsel and DMS and other vendors to address the policy, security, and business implications of mobile device access.
  - Remote access from employees “home” computers
    - Also raises complicated data security, breach, trade secret and other issues
      - How do you control access/copying/sharing?
      - P2P implications? (see below)

<sup>30</sup> Remember that information you collect through internet “cookies” in connection with an inquiry about a financial product or service is considered NPPI. For example, if your dealership website accepts online credit applications, any information you gather during that process via cookies is NPPI.

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- ☐ • Consider implementing a strict data "push" system for sharing data
  - This means that you would only share data with third parties by gathering it, and sending it to them, rather than allowing them to "take" it by accessing your systems.
    - Allows you to have control over what data is shared
    - Prevents concerns regarding access to data
    - Provides audit trail of sharing
  - Work with your DMS provider to set up
  - If no/limited IT staff or expertise, consider a vendor to help.
- ☐ • Implement password/access controls
  - Who has authority to grant access to the DMS, and what level of access?
  - Centralize control over password access.
    - More than one person with ability to grant password access? Why?
      - If one person, then better control over access
        - less likely to be abused
        - easier to document/demonstrate compliance
  - At the least, you must know who has a password and who is using it.
    - Work with your DMS provider to monitor and audit.
  - Address Affiliate Marketing and Sharing issues via password.
    - See NADA Guide on this complicated but important topic.
  - Prohibit employees from sharing passwords.
  - Require regular changes to passwords.
  - Require employees to use "stronger" passwords for any access to sensitive data.
- ☐ • Understand "P2P"
  - "P2P" refers to "Peer-to-Peer" networks. Go here for more: <http://business.ftc.gov/documents/bus45-peer-peer-file-sharing-guide-business>
  - Have a policy and train your employees.
  - Consider prohibiting access to P2P sites.
- ☐ • Consider benefits of segregating your data
  - By manufacturer<sup>31</sup>
  - "Sensitive" from "non-sensitive"
  - Either physically (different servers/systems) or by password
- ☐ • Consider the use of "dummy" or "plant" customers in your DMS

<sup>31</sup> It has been reported to NADA that whether due to limitations in the DMS systems themselves, or because of the way the dealer utilizes the system, dealers are sometimes unable to limit access by manufacturer. For example, a dealer who is a retailer of multiple makes for multiple manufacturers, may not be able to grant access (legitimately, pursuant to an exception to the Privacy Rule) to a manufacturer to only that manufacturer's customers. This creates a potential problem for the reasons described above.

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- ... Put a false customer in your DMS database with a physical and email address you can monitor. Then test what, if any, marketing information comes to that "customer."
  - ... Can provide good insight into who may be accessing your data without your knowledge.
- ☐ • Understand your "Do-Not-Call" and CAN SPAM opt out procedures
  - Are your company-specific opt-out/"do-not-call" lists in place and updated?
    - Ensure that you do not share phone numbers or emails on your lists
  - How do you control third party access to phone numbers or email?
- ☐ • Work with OEMs and others to limit exposure
  - Find the right person at your OEM and maintain open communication
- ☐ • Understand privacy implications of your social media efforts
  - Do you gather any customer information via social media?
    - May not be NPPI, but sensitive from customer relations perspective
  - Do you have any interaction with customer comments/dealership reviews?
    - Understand the FTC Guidelines on Endorsements and Testimonials.
  - Do you engage the services of a "reputation management" vendor?
    - Understand *exactly* what they are doing, what they have access to.
- ☐ • Confirm that your Privacy Notice is accurate!
  - If you share with service providers, you must properly disclose.
    - Note that this is separate from the sharing/opt-out requirement
  - Use the Model Privacy Notice form
  - Review "A Dealer Guide to the Privacy Rule and Model Privacy Notice"
    - At [www.nadauniversity.com](http://www.nadauniversity.com)
    - Make sure you are properly using the model notice form
- ☐ • Understand and meet your Affiliate Sharing and Marketing requirements
  - Applies if you have multiple legal entities (LLC, c corp. etc.)
  - Raises complicated and potentially difficult issues
  - Requires you to limit access to /use of customer data between affiliated entities
  - Review NADA Guides / consult with your attorney

See here for more details:

[www.nadauniversity.com](http://www.nadauniversity.com)

<http://business.ftc.gov/privacy-and-security/data-security>

<http://business.ftc.gov/privacy-and-security/gramm-leach-bliley-act>

<http://www.business.ftc.gov/documents/bus64-ftcs-privacy-rule-and-auto-dealers-faq>

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**Workman, Ron**

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**From:** Bob Brockman [bob\_brockman@reyrey.com]  
**Sent:** Sunday, June 10, 2007 9:00 PM  
**To:** Workman, Ron; Anenen, Steve; robnalley@universalcomputersys.com; 'Agan, Dan'  
**Subject:** ADP 070610 Initial reply.doc  
**Attachments:** ADP 070610 Initial reply.doc



ADP 070610 Initial  
reply.doc (...)

Ron,

My apologies for not replying sooner.

Things remain quite busy in Dayton where I was all of last week. It was not until this weekend that I had sufficient quiet time to analyze the materials that you sent.

Please see the attached thoughts regarding our mutual opportunities.

As I said in our initial meeting on the subject at NADA, I believe that there some attractive opportunities here that in the longer term can be quite significant.

Bob Brockman

Cc Steve Anenen, Rob Nalley, Dan Agan



## **ADP – REYNOLDS & REYNOLDS PARTNERSHIP OPTIONS**

### General Comment

Some of the documents that you sent are somewhat confusing in that they seem to infer the jointly owned entity sells products/services back to each of us to market on our own.

My understanding is exactly the reverse of this. We provide services to the jointly owned entity that then in turn sells products/services to third parties.

### Credit Submission and Electronic Contracting

This project would entail both companies F&I systems creating electronic contracts using the Silanis approach. The principal revenue opportunity would come from creating a Registry that would hopefully become the industry standard for electronic chattel retail auto finance contracts. There would be a custodial charge per contract and a transaction charge per contract.

The ability to have our F&I systems transmit the content of completed retail finance contracts both in image form and in text string form to the various lenders should also be worth something.

Given the patent position of DealerTrack, it is less clear that there is an opportunity to do the one-to-many credit application process that they do. However there is no barrier to doing one-to-one credit applications.

Whatever further insight you have on the credit application business would be appreciated.

For this opportunity I would favor option 2 for the following reasons:

- no corporate double taxation issues
- revenue and profits gets split between the partners based upon their participation
- any losses during start up are able to be offset against income in our main corporations

### Route One

From what I understand there may be a current opportunity revolving around Route One.

If we were to enhance our F&I systems in such a way that facilitated the business of Route One, they might be willing to give us a share in the transaction revenue.

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They are obviously in a competitive position vs. DealerTrack and therefore might be willing to do this.

By combining forces in the partnership entity described above, we might be able to convince Route One that this was a good idea.

#### Data Services

This business is defined as the service of extracting data from dealership systems for third parties such as mailing services and manufacturers. I do not envision this business to be involved in the two-way integration that we both do with other third party software system providers such as CRM or F&I packages.

ADP would contribute the DMI business to this Newco entity along with its technology for accessing DMS systems via modem.

Reynolds would contribute to this Newco entity its technology for accessing ERA and POWER systems plus all of its current contracts for providing these services to third parties.

There would likely be some valuation issues involved in doing this.

Newco would then be the provider of extraction/collection of data from both our DMS products to all third parties.

For this opportunity I believe that option 3 is most appropriate for the following reasons:

- ADP can be given sufficient control to allow them to report the sales revenue which prevents a loss of the revenue ADP currently reports from DMI

- this revenue allocation is conditioned upon an effective split of the profits based upon the amount of data collected from our respective DMS customers

#### Data Agreement

#### Background

- unattended remote access to Reynolds systems is going to cease
- major issue is data security of personal information
- secondary issue is data security of business information – “True Car”

#### Reynolds Certified Interface

- RCI program governs exactly what data is extracted, when, and what it is to be used for
- charges are based upon the complexity, volume, frequency
- the data goes to single entity for use with a specific product or service that they provide
- the data cannot go to a 3<sup>rd</sup> party that in turn resells the data to other third parties as this is a breakdown in accountability
- requires contractual indemnification for data breach
- data broker situation is intolerable for the above reasons – as the data can get loose to who knows where – then when something goes wrong, the plaintiff’s attorneys start looking for the deep pockets

#### Possible Ways to Handle Data

Examples of what could be tolerable:

- where ADP or Reynolds provides a specific product to a specific customer for a specific purpose – this could be covered by an RCI-type agreement for that data feed
- the level of indemnification could vary based upon the extent of PIN that is involved
- for example batch-type data that goes into a specific ADP or Reynolds product – such as vehicle inventory information into a Cobalt or Reynolds web site could be a daily feed without much indemnification since the data involved is not PIN
- batch-type data that DMI collects for an OEM where they provide substantial additional services in regards to the data – would require that this data is sent

only to the OEM – and since PIN data is involved, indemnifications would be necessary

-batch type data that Authenticom (or some other Reynolds agent) collects from ADP sites for Reynolds to use in marketing programs that it sells to the dealer would require that this data is used for no other purpose – and since PIN data is involved, indemnifications would be necessary

Use of Agents

-the use of a 3<sup>rd</sup> party acting under contract as an agent of ADP or Reynolds is not an issue as long as the specific RCI agreement is directly between us – either of us would take responsibility for their agents

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REYCID0719799  
CX4043-002

FTC-0000317

**From:** Hoyt, Chuck  
**Sent:** Wednesday, August 14, 2013 12:42 AM  
**To:** 'Larib, Ronak'  
**Subject:** FW: Captcha Codes

This is just an FYI for now. We are working with Chris Hallyer regarding Stone Eagle, but this is probably going to send Joe Serra over the top. If he reaches out to you, just forward to me (unless you want to call him). I will take the bullets.... I am already bloodied after only two days of this data security. A couple of more arrows won't make a difference..... ☹

---

**From:** Murphy, Aaron W (SALES) [mailto:Aaron\_Murphy@reyrey.com]  
**Sent:** Tuesday, August 13, 2013 4:02 PM  
**To:** Ron Haggin  
**Subject:** RE: Captcha Codes

Ron,

I sent your request over to the Data Security team and they informed me that we are no longer removing captcha codes on the systems. As you are aware, captcha codes are a standard in nearly every industry designed to protect your data from automated access in an uncontrolled environment. If you are having a specific issue with a particular vendor who is attempting to access your system via an automated method, please direct them to our RCI team for certified access. The RCI Team can be reached at 888-347-3080.

Thank you,

Aaron Murphy

Major Accounts Executive  
Reynolds and Reynolds  
Cell 740-815-6104  
EFax 866-741-4562

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**From:** Ron Haggin [mailto:rhaggin@serrausa.com]  
**Sent:** Tuesday, August 13, 2013 2:15 PM  
**To:** Murphy, Aaron W (SALES); Hoyt, Chuck; Joe Serra; Tony Nichols; Matt Daugherty; Will Kelley; Keith Harvey; Bates, David J  
**Subject:** Captcha Codes

All,

The captcha codes were reinstalled on our system throughout all of our stores.

As in the past, we request that the codes are uninstalled on all of our systems.

Thanks in advance for your assistance.

---

Ron Haggin  
Serra Automotive, Director of Operations  
rhaggin@serrausa.com

810.603.1151 Direct Office  
810.691.5206 Cell ~ Texts welcome  
810.694.1720 Main Office x1151  
www.SerraUSA.com  
Mailing Address.....3118 E. Hill Road, Grand Blanc, MI 48439

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RFYCID0203876  
CX4515-001

FTC-0000487

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**From:** "Hill, Keith" <keith\_hill@reyrey.com>  
**Subject:** FW: Joel Confer Toyota - SXMTMS37094 - Invalid Login Issue

**From:** Hill, Keith  
**Sent:** Friday, August 16, 2013 2:52 PM  
**To:** Robert Schaefer (robert\_schaefer@reyrey.com); 'Brockman, Bob'  
**Subject:** FW: Joel Confer Toyota - SXMTMS37094 - Invalid Login Issue

This is the type of response customers are getting from Integralink and dmi.  
Devlon,

Please understand that R&R is 100% responsible for this situation. R&R tells its dealers that they should have their third party vendors become RCI certified but they tell us, DMI, that they will not allow us to become RCI certified. Your vendors most likely have already contacted Reynolds, but Reynolds has not budged. Unfortunately this leaves you, the dealer, with a decision.

- 1) Continue to help DMI access your R&R ERA system so that we can collect the needed data and provide it to your vendor. DMI only accesses your system using credentials that your dealership provides.
- 2) Push the needed data in the needed format to DMI so that we can normalize it and provide it to your vendor.
- 3) Discontinue participation in the program or programs that require this data.

Obviously we don't want #3 to be the outcome but I feel it's important to list as it's one of the three options that is available to you.

Please feel free to call or email me with any questions, or anything I can help with.

**Keith Hill - 281-380-9574**

---

**From:** Hoyt, Chuck [mailto:chuck\_hoyt@reyrey.com]  
**Sent:** Friday, August 16, 2013 9:48 AM  
**To:** Ray Hoffman; Michael Behm; Peter Sidwell; Christopher Rulon; Chris Walsh; Rick Altwater  
**Cc:** Keith Hill  
**Subject:** Fwd: Joel Confer Toyota - SXMTMS37094 - Invalid Login Issue

Fyi

Sent from my iPhone.

Begin forwarded message:

**From:** "Karloski, Ronald S (Ron)" <ronald\_karloski@reyrey.com>  
**Date:** August 16, 2013, 10:44:44 AM EDT  
**To:** "Hoyt, Chuck" <chuck\_hoyt@reyrey.com>  
**Subject:** Fwd: Joel Confer Toyota - SXMTMS37094 - Invalid Login Issue

Note below what DMI is telling dealers. I sent to Bob Schaefer.

Sent from my iPhone

Begin forwarded message:

**From:** "Tabaka, Mark C" <mark\_tabaka@reyrey.com>  
**Date:** August 16, 2013, 9:02:03 AM EDT  
**To:** "Karloski, Ronald S (Ron)" <ronald\_karloski@reyrey.com>, "Hellyer, Chris H" <chris\_hellyer@reyrey.com>  
**Subject:** Fwd: Joel Confer Toyota - SXMTMS37094 - Invalid Login Issue

FYI What DMI is saying

More to come

Mark Tabaka

412.445.9945

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REYCID0042299  
CX4004-001

FTC-0000300

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

Sent from my iPhone  
Begin forwarded message:

**From:** Devlon <[devlonc@joelconfer.com](mailto:devlonc@joelconfer.com)>  
**Date:** August 16, 2013, 8:50:24 AM EDT  
**To:** "Tabaka, Mark C" <[mark\\_tabaka@revrey.com](mailto:mark_tabaka@revrey.com)>  
**Subject:** Fwd: Joel Confer Toyota - SXMTMS37094 - Invalid Login Issue

So it's all Reynolds fault

Devlon Cowart

Sales Manager  
Joel Confer Toyota  
814-237-5713  
[www.joelconfer.com](http://www.joelconfer.com)  
Begin forwarded message:

**From:** "King, Steven" <[kings@digitalmotorworks.com](mailto:kings@digitalmotorworks.com)>  
**Date:** August 16, 2013, 8:33:17 AM EDT  
**To:** Devlon Cowart <[devlonc@joelconfer.com](mailto:devlonc@joelconfer.com)>  
**Cc:** "jilexmake@joelconfer.com" <[jilexmake@joelconfer.com](mailto:jilexmake@joelconfer.com)>, "earleby@statecollege.com" <[earleby@statecollege.com](mailto:earleby@statecollege.com)>, "safelink\_support@digitalmotorworks.com" <[safelink\\_support@digitalmotorworks.com](mailto:safelink_support@digitalmotorworks.com)>, "safelink\_support@digitalmotorworks.com" <[safelink\\_support@digitalmotorworks.com](mailto:safelink_support@digitalmotorworks.com)>, "King, Steven" <[kings@digitalmotorworks.com](mailto:kings@digitalmotorworks.com)>  
**Subject:** RE: Joel Confer Toyota - SXMTMS37094 - Invalid Login Issue

Devlon,

Please understand that R&R is 100% responsible for this situation. R&R tells its dealers that they should have their third party vendors become RCI certified but they tell us, DMI, that they will not allow us to become RCI certified. Your vendors most likely have already contacted Reynolds, but Reynolds has not budged. Unfortunately this leaves you, the dealer, with a decision.

- 1) Continue to help DMI access your R&R ERA system so that we can collect the needed data and provide it to your vendor. DMI only accesses your system using credentials that your dealership provides.
- 2) Push the needed data in the needed format to DMI so that we can normalize it and provide it to your vendor.
- 3) Discontinue participation in the program or programs that require this data.

Obviously we don't want #3 to be the outcome but I feel it's important to list as it's one of the three options that is available to you.

Please feel free to call or email me with any questions, or anything I can help with.

Thank you,

Steven King  
Safelink Support -- TCA /  
847.807.2046 office  
614.324.7802 fax  
[kings@digitalmotorworks.com](mailto:kings@digitalmotorworks.com) email  
<[image001.jpg](#)>

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**From:** Devlon Cowart [<mailto:devlonc@joelconfer.com>]

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REYCID0042300  
CX4004-002

FTC-0000301



HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

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**Sent:** Thursday, August 15, 2013 6:03 PM  
**To:** King, Steven (DS)  
**Cc:** [lfatemate@joelconfer.com](mailto:lfatemate@joelconfer.com); [society@statercollege.com](mailto:society@statercollege.com)  
**Subject:** Joel Confer Toyota - SXMTMS37094 - Invalid Login Issue

Steven,

Due to the recent changes Reynolds and Reynolds has made to setting up new login accounts we will no longer be able to provide logins to 3<sup>rd</sup> parties. It is a violation of our agreement with Reynolds and Reynolds to allow 3<sup>rd</sup> parties access to our system remotely. Please contact Reynolds and Reynolds, to see what you need to do enroll in the Reynolds Certified Interface program, at 937.485.0402. If your company is unable or unwilling to enroll in the Reynolds Certified Interface program then please have the companies you are pulling data for contact Reynolds and Reynolds directly.

Please see the attached PDF. This is the warning we get when setting up new user logins.

Regards

Devlon L Cowart  
Joel Confer Toyota/Scion/BMW  
Sales Manager  
814-237-5713

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REYCID0042301

CX4004-003

FTC-0000302



# FTC Redacted

**From:** Brockman, Bob [[mailto:bob\\_brockman@reyrey.com](mailto:bob_brockman@reyrey.com)]  
**Sent:** Monday, November 25, 2013 12:32 PM  
**To:** 'Robert Schaefer'  
**Subject:** RE: R&R/ADP Agreement

Bob,

You have authority to pursue discussions with ADP on these subjects as per our conversation.

Bob

---

**From:** Robert Schaefer [[mailto:Robert\\_Schaefer@reyrey.com](mailto:Robert_Schaefer@reyrey.com)]  
**Sent:** Monday, November 25, 2013 8:28 AM  
**To:** 'Brockman, Bob'  
**Subject:** FW: R&R/ADP Agreement

Bob

Per our conversation, please respond back to this email giving me the authority to pursue discussions on a general framework with ADP. Once I receive your approval I will forward to the ADP team and we can begin the process.

---

**From:** Gardner, Howard [<mailto:hgardner@dmotorworks.com>]  
**Sent:** Tuesday, November 12, 2013 1:45 PM  
**To:** 'Schaefer, Robert G' ([robert\\_schaefer@reyrey.com](mailto:robert_schaefer@reyrey.com))  
**Subject:** R&R/ADP Agreement

Bob –

The following is a summary of the main business points we discussed on September 27<sup>th</sup> relating to a possible agreement between Reynolds & Reynolds and ADP. I've included additional detail and clarification of ADP's perspective in the summary.

If we are in agreement that these points can form the basis for further discussions, the next step is a phone meeting with you, Ron Workman, and me. Ron and I can both be available for a call this Friday, November 15<sup>th</sup>, early the week of November 25<sup>th</sup>, or the week of December 2<sup>nd</sup>. Please let me know which date works best for you.

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CX1151-001

FTC-0000294

Our continuing discussions are based on certain premises and expectations:

1. Bob Brockman would like to work toward an agreement with ADP, and he has granted you the authority to pursue discussions on a general framework with ADP.
2. Reynolds & Reynolds indemnification has been relaxed since we last exchanged documents, and it is open for discussion/negotiation.
3. We are conceptually in agreement on the following, which would become the starting point for further discussions.

#### **Application Integration – Reciprocal 3PA/RCI Access**

Reynolds & Reynolds and ADP will work toward an agreement that enables bi-directional “approved” or “certified” access for certain R&R applications and services (which may include data provided by DMI) and similar reciprocal access for certain ADP applications and services. Reynolds is open to discussing inclusion of any (and all) ADP applications/services in an agreement (or agreements).

The business framework we would each use is to approve/certify applications with a process not unlike that which both Reynolds & Reynolds and ADP use today with other third parties. We discussed the concept of utilizing our respective existing 3PA or RCI contracts, processes, integration technologies, etc. as a potentially reasonable approach, although from a contracting standpoint, ADP would suggest that the parties consider utilizing a “framework” or “master” agreement containing all general terms and conditions, with specific agreed-upon integration points to be set forth in separate Statements of Work which are appended to the master. Pricing would be negotiated on a reciprocal basis (similar price for similar integration).

#### **DMI – “Soft Landing” for OEMs and other third parties**

We will work toward agreement on a general approach for DMI data access that would include all DMI clients (current and future). The key points of the approach are:

1. **OEMs:** Reynolds & Reynolds and DMI will formalize and extend our collaborative approach to helping OEMs transition to a “protected program” to prevent future disruption of data access. DMI will work with R&R and each participating OEM (as we have been) to smoothly transition each OEM to a Reynolds certified interface when Reynolds is prepared to provide service.
2. **Non-OEM Third Parties:** R&R and DMI will jointly create and launch a “protected program” that DMI will offer to its existing and prospective non-OEM clients. DMI will recommend the “protected program” to existing clients; however, these clients would have the choice of continuing service through existing “unapproved” integration (which would continue to be susceptible to disruption). DMI would agree to sunset unapproved integration for new clients, and offer only the “protected program” in contracts with new clients that include R&R dealers. R&R will work with DMI to create one or more R&R approved and supported alternative data access options that enable dealers to create downloadable data files for retrieval by DMI, or transmission to DMI by the dealer. R&R is open to discussing special programs for DMI’s inventory data clients that could facilitate increased adoption of R&R’s supported tools for inventory data syndication.
3. **Technology Investment:** R&R and DMI will collaborate to define and invest in the development of technology-based tools that automate, accelerate, simplify, and stream-line the process of setting up and managing the “protected programs” for OEMs and third parties.
4. **Exclusivity:** Due to the investments in technology required to establish and administer “protected programs”, R&R is open to the R&R “protected programs” becoming an exclusive offering by DMI, subject to further discussion and legal review.
5. **Financial:** The nature of the agreement between R&R and DMI would add structure and simplicity to the process we use currently to cooperatively facilitate transition of OEMs and third parties to R&R certified interfaces. Each party (R&R and DMI) would cover our respective costs, and there would be no payments between parties related to this agreement.

#### **Market Messaging – Data Security**

ADP would be open to adopting and advocating common industry standards and/or recommendations, although we

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**CDK\_CID\_01734953**

CX1151-002

**FTC-0000295**

would both have to consider the appropriate mechanism for doing so (for example, through or in conjunction with an industry organization such as NADA).

**Howard Gardner**  
DVP & General Manager  
Digital Motorworks Inc.  
ADP Dealer Services

(512) 692-2479 | [howard.gardner@ada.com](mailto:howard.gardner@ada.com)

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CX1151-003

**FTC-0000296**

-long-standing issues around security

-the liability to Reynolds and to our dealer customers of allowing 3<sup>rd</sup> parties unfettered and uncontrolled access to Reynolds systems is such that my stated goal for years has been to end it

-we have been steadily making a series of security changes in our software that is more and more effective at denying 3<sup>rd</sup> party access

-about two month ago Howard Gardner called Bob Schaefer

-gist of the conversation was that ADP wanted to transition out of their commitments to a hundred 3<sup>rd</sup> party firms that ADP had contracts with for extracting data from Reynolds systems.

-we had already done this with Phil Batista

-I agreed to discuss doing this with ADP on two preliminary conditions:  
-we get settled on indemnification language

-the second point is very much a personal one

-ADP has been extracting data out of Reynolds systems for over a decade

-ADP has been in the business of providing that data to a host of other 3<sup>rd</sup> party Firms

-ADP has wrongly taken advantage of Reynolds in the marketplace over the issue of data security – that has cost us in the millions

-ADP (Howard Gardner) has caused a lot of grief with OEM's, particularly GM by being downright untruthful about the amount of data they were extracting from Reynolds systems (in the name of GM) that far exceeded the GM requirements

Therefore I want a no-charge access to ADP systems for the next 20 years – to be used only for a product that Reynolds offers – like service reminders – not to be used to extract data for other 3<sup>rd</sup> parties.

-we have been upfront about these two points since the beginning of the conversation.

-indemnification has been dealt with

-the interface request has been dealt with from a technical standpoint, however has been stalled for over a month

-Ron Workman has reported that my interface request can only be approved by you.

-we have held up on a large release of security enhancements for over 2 months to see if there was a deal to be worked out on orderly transition

-I am tired of the whole thing – you need to make a decision one way or the other – do we continue to work on an orderly transition plan or not

-there is still the business issues of transitioning ADP out of their contractual obligations (to the hundred 3<sup>rd</sup> parties) to extract data out of Reynolds systems

-I need an answer on the no-charge access issue now – so the project goes ahead or gets cancelled

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REYCID0263975  
CX4035-002

FTC-0000305